MONTANA LEGISLATIVE HISTORY

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H. Committee on Labor & Employment Relations		S. Committee on Labor & Employment Relations	
Hearing Date(s) Mar 11	✓ C	Hearing Date(s) Feb 16	✓ C
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Date Out Mar 11	✓ C	Feb 16	✓ C

Did this bill originate in an interim committee? ____ Yes ____ No

Committee _____ Report _____

Senate BILL NO. 430

INTRODUCED BY LABOR & EMPLOYMENT RELATIONS COMMITTEE Lee Chairman

BY REQUEST OF THE DIVISION OF WORKERS' COMPENSATION

A BILL FOR AN ACT ENTITLED: "AN ACT FOR THE GENERAL CLARIFICATION AND REVISION OF THE OCCUPATIONAL DISEASE ACT OF MONTANA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. There is a new R.C.M. section numbered 92-1303.1 that reads as follows:

92-1303.1. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Beneficiary" is as defined in 92-413.

(2) "Child" is as defined in 92-417.

(3) "Disablement" means the event of becoming physically incapacitated by reason of an occupational disease from performing any work for remuneration or profit. "Silicosis", when complicated by active pulmonary tuberculosis, is presumed to be total disablement. "Disability", "total disability", and "totally disabled" are synonymous with "disablement", but they have no reference to "partial permanent disability".

(4) "Division" is as defined in 92-426.

(5) "Employer" is as defined in 92-410.1.

(6) "Employee" is as defined in 92-411.

(7) "Husband" is as defined in 92-425.

(8) "Independent contractor" is as defined in 92-438.1.

(9) "Insurer" is as defined in 92-435. The term includes an employer who is self-insured under compensation plan No. 1.

(10) "Invalid" is as defined in 92-416.

(11) "Pneumoconiosis" means a chronic dust disease of the lungs arising out of employment in coal mines and includes anthracosis, coal workers' pneumoconiosis, silicosis, or anthracosilicosis arising out of such employment.

(12) "Order" is as defined in 92-429.

(13) "Silicosis" means a chronic disease of the lungs caused by the prolonged inhalation of silicon dioxide (SiO_2), characterized by small discrete nodules of fibrous tissue similarly disseminated throughout both lungs causing the characteristic x-ray pattern and by other variable clinical manifestations.

(14) "Wages" is as defined in 92-423.1.

(15) "Wife" is as defined in 92-424.

(16) "Year" is as defined in 92-433.

Section 2. Section 92-1311, R.C.M. 1947, is amended to

SB430

read as follows:

"92-1311. Payment of compensation — exceptions and limitations. ~~A.~~(1) ~~Compensation~~ When he has complied with other provisions of this chapter, compensation shall be paid to ~~every employee~~ a claimant who becomes disabled by reason of occupational disease arising out of his employment, subject to the ~~following~~ conditions~~; and when claims are presented and notices given in accordance with the limitations of sections 92-1312 and 92-1313~~ set forth in this chapter.

~~1.~~(a) ~~No~~ Except as provided for in this section, compensation ~~shall~~ may not be paid when the last day of the injurious exposure of the employee to the hazard of the occupational disease has occurred prior to ~~the effective date of this act except as in this section, paragraph "A," subparagraph 4 provided~~ July 1, 1959.

~~2.~~(b) No compensation ~~shall~~ may be paid for a disease, other than silicosis or due to ionizing radiation, unless total disability results within ~~one hundred twenty (120)~~ days from the last day upon which the employee actually worked for the employer against whom compensation is claimed~~;~~, ~~provided that the board~~ However, the division, upon good cause shown, may waive this limitation in the interest of justice, but in any case ~~said~~ the period may not be extended to more than ~~one~~ 1 year from the date of last

employment by the ~~said~~ employer.

~~3.~~(c) ~~No~~ Except as provided for in subsection (1)(d) of this section, no compensation ~~shall~~ may be paid ~~in case of~~ for silicosis unless during the ~~eight~~ 8 years immediately preceding the disablement the injured employee has been exposed to harmful quantities of silicon dioxide dust for a total period of not less than ~~one thousand (1,000)~~ workshifts in employment in this state and unless total disability results within ~~four~~ 4 years from the last day upon which the employee actually worked for the employer against whom compensation is claimed.

~~4.~~(d) ~~Provided, however, that any~~ A silicotic employee who is discharged by his employer to escape liability for silicosis benefits under this ~~act~~ chapter ~~shall be~~ is eligible to receive compensation under this ~~act~~ chapter when totally disabled if he has ~~seven hundred (700)~~ actual workshifts since January 1, 1954, for that employer~~;~~, ~~provided, further, when~~ When any employee in employment on or after January 1, 1959, because he has an occupational disease incurred in and caused by such employment~~,~~ which is not yet disabling, is discharged or transferred from the employment in which he is engaged~~,~~ or when ~~an employee~~ he ceases ~~such~~ his employment and it is in fact, as determined by the medical panel, inadvisable for him on account of ~~such~~ a nondisabling occupational disease~~,~~ to continue in ~~it,~~

employment and he suffers wage loss by reason of ~~such~~ the discharge, transfer, or ~~such~~ cessation, the ~~board~~ division may allow compensation on account thereof as it ~~may deem~~ considers just, not exceeding ~~five thousand dollars ($5,000.00)~~ $10,000.

~~5. No claim shall be maintained nor compensation paid unless the claim has been filed with the employer, the insurer, of [or] the board, in writing under oath within the time fixed by section 92-1212.~~

~~8.~~(2) ~~The compensation~~ Compensation shall be paid to the ~~beneficiary and dependents~~ beneficiaries of every employee covered by this ~~act~~ chapter in cases where death results from an occupational disease arising out of his employment, subject to the following conditions:

~~1.~~(a) ~~No~~ Except as provided for in subsection (1)(d) of this section, compensation ~~shall~~ may not be paid when the last day of injurious exposure of the employee to the hazards of the occupational diseases ~~has~~ occurred prior to ~~the effective date of this act, except as in this section, paragraph "A," subparagraph 4 of this act provided~~ July 1, 1959.

~~2.~~(b) No compensation ~~shall~~ may be paid for death from silicosis unless during the ~~eight~~ 8 years immediately preceding the disablement the deceased employee has been exposed to harmful quantities of silicon dioxide dust for a

period of not less than ~~one thousand (1,000)~~ workshifts in employment in this state.

~~3.~~(c) No compensation ~~shall~~ may be paid for death from silicosis unless the death results within ~~four (4)~~ years from the last day upon which the employee actually worked for the employer against whom compensation is claimed, except in those cases where death results during a period of continuous total disability from silicosis for which compensation has been paid or awarded, or for which a claim, compensable but for such death, is on file with the ~~commission~~ division. In such cases compensation shall be paid if death results within ~~seven (7)~~ years from the last day upon which the employee actually worked for the employer against whom compensation is claimed.

~~4.~~(d) No compensation ~~shall~~ may be paid for death from any occupational disease, other than silicosis or due to ionizing radiation, unless death results within ~~one (1)~~ year from the last day upon which the employee actually worked for the employer against whom compensation is claimed, except in those cases where death results during a period of continuous total disability from an occupational disease, other than silicosis or ionizing radiation, for which compensation has been paid or awarded, or for which a claim, compensable but for such death, is on file with the ~~board~~ division. In such cases compensation shall be paid if death

results within ~~three (3)~~ years from the last day upon which the employee actually worked for the employer against whom compensation is claimed.

~~5. No claim shall be maintained nor compensation paid unless the claim has been filed with the employer, the insurer or the board, as the case may be in writing within the time fixed by section 92-1312.~~

~~6.~~ (3) Proof of the exposure to silicon dioxide dust for a period of not less than ~~one thousand two hundred (1,200)~~ workshifts in employment in this state, with proof of total disability from silicosis, ~~shall be~~ is prima facie evidence of exposure to harmful quantities of such dust during all such period."

Section 3. There is a new R.C.M. section numbered 92-1312.1 that reads as follows:

92-1312.1 Time when claims must be presented. (1) When a claimant seeks benefits under this chapter, his claims for benefits must be presented in writing to the employer, the employer's insurer, or the division within 1 year from the date the claimant knew or should have known that his total disability condition resulted from an occupational disease. When a beneficiary seeks benefits under this chapter, his claims for death benefits must be presented in writing to the employer, the employer's insurer, or the division within 1 year from the date the beneficiaries knew or should have

known that the decedent's death was related to an occupational disease.

(2) The division may, upon a reasonable showing by the claimant or a decedent's beneficiaries that the claimant or the beneficiaries could not have known that the claimant's condition or the employee's death was related to an occupational disease, waive the claim time requirement up to an additional 2 years.

(3) Notwithstanding the provisions of subsections (1) and (2) of this section, no claim to recover benefits under this chapter may be maintained unless the claim is properly filed within 3 years after the last day upon which the claimant or the deceased employee actually worked for the employer against whom compensation is claimed.

Section 4. Section 92-1314, R.C.M. 1947, is amended to read as follows:

"92-1314. ~~Medical~~ Pulmonary specialist medical panel, ~~9medical committee,~~ and pulmonary specialists. (1) The Montana medical association may, at least annually, certify to the ~~board~~ division ~~as "medical committee nominees" thirty (30) or more licensed physicians of the state of Montana who are particularly qualified in the diagnosis, care and treatment of occupational diseases. In addition thereto, and simultaneously therewith the Montana medical association may certify to the board~~ as "pulmonary specialists nominees"

three ~~(3)~~ or more licensed physicians of the state who shall have had at the time of certification at least ~~five (5)~~ years' practice in the diagnosis, care, and treatment of diseases of the pulmonary tract and the interpretation of ~~X-ray~~ x-ray films thereof and may also certify to the division as occupational disease specialist nominees three or more licensed physicians of the state who have at the time of certification qualifications in the diagnosis, care, and treatment of nonpulmonary occupational diseases. From the two lists submitted as provided for in this section, the division shall appoint two separate medical panels. One panel is the pulmonary specialist medical panel and the other is the occupational disease medical panel. The division shall appoint from the list of pulmonary specialist nominees three or more physicians to serve on the pulmonary specialist medical panel. The division shall appoint from the list of occupational disease specialist nominees three or more physicians to serve on the occupational disease specialist medical panel. ~~From said list of physicians certified as "medical committee nominees," the board shall appoint thirty (30) physicians who shall serve as and be hereinafter referred to as the "medical committee" and who shall examine claimants for occupational disease disabilities other than silicosis. From said list of physicians so certified as "pulmonary specialist nominees"~~

~~the board shall appoint three (3) or more physicians who shall serve as and be hereinafter referred to as "pulmonary specialists."~~

(2) ~~In the event that~~ If the Montana medical association fails to ~~make the certification as hereinabove provided, then, in that event, the board shall of its own choice appoint thirty (30) licensed physicians in the state of Montana who are particularly qualified in the diagnosis, care and treatment of occupational diseases which said physicians shall serve as and be hereinafter referred to as the "medical committee" and~~ submit the two lists of nominees as provided for in this section, the division shall appoint members to the medical panels by appointing to the pulmonary specialist medical panel three ~~(3)~~ or more licensed physicians in the state of Montana who have had at the time of appointment at least ~~five (5)~~ years' practice in the diagnosis, care, and treatment of diseases of the pulmonary tract and the interpretation of ~~X-ray~~ x-ray films thereof, ~~which latter group of three (3) or more shall serve as and be hereinafter referred to as "pulmonary specialists." The "medical committee," together with the "pulmonary specialists," shall be known as and hereinafter referred to as the "medical panel."~~ and by appointing to the occupational disease medical panel three or more licensed physicians of the state who have at the time of appointment

qualifications to diagnose, care for, and treat nonpulmonary occupational diseases."

Section 5. There is a new R.C.M. section numbered 92-1314.1 that reads as follows:

92-1314.1. Procedure for medical examination. (1) In order to determine the compensability of claims under this chapter based on pulmonary conditions, the following procedure shall be followed:

(a) The division shall direct the claimant to a pulmonary specialist who is a member of the pulmonary specialist medical panel for an examination. The pulmonary specialist shall conduct an examination to determine whether the claimant is totally disabled and is suffering from a pulmonary occupational disease. The pulmonary specialist shall submit a report of his findings to the division.

(b) Either the claimant or the insurer may, within 20 days after the receipt of the report by the first pulmonary specialist, request that the claimant be examined by a second pulmonary specialist who shall be a member of the pulmonary specialist medical panel. If a second examination is requested, the division shall direct the claimant to a second pulmonary specialist and the pulmonary specialist shall conduct an examination to determine whether he believes the claimant is totally disabled and is suffering from a pulmonary disease. The pulmonary specialist shall

submit a report of his findings to the division. When a second examination has been requested, the reports of the examinations shall be submitted to the pulmonary specialist medical panel for its review. The panel shall issue its report concerning the claimant's physical condition and whether the claimant is suffering from an occupational disease.

(c) If a second examination is not requested, the division shall issue its order determining whether the claimant is entitled to occupational disease benefits based on the report of the first examining physician. If a second examination is requested, the division shall issue its order based on the report of the pulmonary specialist medical panel.

(2) In order to determine the compensability of claims under this chapter based on nonpulmonary conditions, the following procedure shall be followed:

(a) The division shall direct the claimant to an occupational disease specialist who is a member of the occupational disease medical panel for an examination. The specialist shall conduct an examination to determine whether the claimant is totally disabled and is suffering from an occupational disease. The specialist shall submit a report of his findings to the division.

(b) Either the claimant or the insurer may, within 20

days after the receipt of the report by the first specialist, request that the claimant be examined by a second specialist. If a second examination is requested, the division shall direct the claimant to a second specialist who is a member of the occupational disease medical panel and the specialist shall conduct an examination to determine whether he believes the claimant is totally disabled and is suffering from an occupational disease. The specialist shall submit a report of his findings to the division. When a second examination has been requested, the reports of the examinations shall be submitted to the occupational disease medical panel for its review. The panel shall issue its report concerning the claimant's physical condition and whether the claimant is suffering from an occupational disease.

(c) If a second examination is not requested, the division shall issue its order determining whether the claimant is entitled to occupational disease benefits based on the report of the first examining specialist. If a second examination is requested, the division shall issue its order based on the report of the occupational disease medical panel.

(3) A report submitted to the division by the appropriate medical panel and placed in the division's records is prima facie evidence as to the matters contained

in the report.

(4) Upon the division's own motion or if a claimant or an insurer requests that a hearing be held by the division prior to the time the division issues its final determination concerning the claimant's entitlement to occupational disease benefits, the division shall hold a hearing.

(5) At a hearing held before the division or the workers' compensation judge, the report of the medical panel and the two medical examinations conducted by members of the medical panel are exclusive and final and no other medical evidence or additional medical examinations are admissible. However, the physicians to which the claimant has been referred as provided for in this section may, in order to assist them in reaching their conclusion, consult with the claimant's attending physician.

(6) Within 20 days after the division has issued its order of determination as to whether the claimant is entitled to benefits under this chapter, a party may request a rehearing. In order to perfect an appeal to the workers' compensation judge, the appealing party must request a rehearing before the division. The division may grant a rehearing and, if a rehearing is granted, the division's final determination shall not be issued until after the rehearing. If the division does not grant a rehearing, the

division's final determination is issued on the date the rehearing is denied.

Section 6. Section 92-1315, R.C.M. 1947, is amended to read as follows:

"92-1315. ~~Procedure for medical examination.~~ Standards for determining whether death or disability due to pneumoconiosis. ~~A. In order to determine the validity of claims made pursuant to the provisions of this act, the following procedure and no other shall be followed in the course of the medical examination of the claimant for official report to said board, claimant, employer, or insurer, as the case may be.~~

~~1. Upon the filing of a claim by a claimant for occupational disease disability, other than silicosis or pneumoconiosis, the board shall direct a member from said "medical committee" to examine and determine the disability of the claimant and submit a written report thereon to the board.~~

~~Upon the filing of a claim for compensation for silicosis disability under this act, the board shall direct an examination of and report to the board upon the claimant by said "pulmonary specialists," or one of them, including such X-ray and other pathological examination and tests as in the opinion of such specialist or specialists may be necessary for the purpose of determining diagnosis,~~

~~disablement, and the nature and type of medical treatment, hospitalization and other care required. If the claim is not controverted as to any medical fact, the examination and report of one of said specialists, shall be deemed the examination and report of all "pulmonary specialists." If the claim is controverted as to any medical fact, the report shall be made by all of said specialists after a physical examination by at least two (2) of them. The findings and opinions of a majority of the number of said specialists then appointed shall constitute the findings and opinions of all of them. The contents of the report of said "pulmonary specialists" when placed in the record shall constitute prima facie evidence of fact as to the matter therein contained. The "pulmonary specialists" or any one (1) of them making the report shall be subject to examination upon demand of any interested parties.~~

~~The "pulmonary specialists," or any one (1) of them in order to assist in reaching a conclusion may require the attending physician or director of a hospital or a sanitarium or other place in which treatment or care is being given, or has been given, to attend at a convenient time and place to consult with said specialists, or any one of them and to describe the nature and type of care and treatment and furnish any other evidence which said specialist or specialists desire.~~

Upon receiving the written report of such examining physician or physicians so appointed, the board shall forthwith determine whether or not the claimant shall receive the benefits pursuant to this act and it shall forward notice of its determination together with a true and correct copy of said medical report to the claimant and the employer or insurer as the case may be.

3. If within twenty (20) days after receipt of such notice and medical report the claimant, employer or insurer, as the case may be, is dissatisfied with said determination by said board, they, or any of them, may demand a hearing before said board pursuant to the rehearing provisions of section 92-829. If, however, the board, claimant, employer or insurer, or any of them, is dissatisfied with the results of such first medical examination as indicated by said medical report, such dissatisfied party may upon thirty (30) days' notice in writing to all adversary parties and to the board require a re-examination by a member of said "medical panel"; provided, however, that if the benefits claimed are for a disability caused by silicosis the physician so selected by the dissatisfied party must be one of the "pulmonary specialists." Thereupon, after receipt of the report of medical re-examination, the board shall give like notice of its determination, whether said determination shall be the same as before or otherwise, together with a

copy of said medical report, in the same manner as in the case of the first such examination and the party shall be entitled to a rehearing in the same manner as in the case of such first medical examination. The evidence of the two (2) medical examinations above described shall be final, and, so far as the medical examination of the claimant is concerned, no evidence of other or additional medical examinations shall be admissible before the board upon rehearing nor before any court upon the appeal, if any.

B. The standards for determining death or total disability due to pneumoconiosis are as follows:

1. (1) Total disability defined. A miner is under a total disability due to pneumoconiosis if: (a) He is suffering or suffered from a chronic dust disease of the lung which: (1) when diagnosed by chest roentgenogram, yields one or more large opacities (greater than one centimeter in diameter) and would be classified in category A, B, or C in the international classification of radiographs of the pneumoconioses by the international labor organization; or (2) when diagnosed by biopsy or autopsy, yields massive lesions in the lung, that is, shows the existence of progressive massive fibrosis; or (3) when established by diagnosis by means other than those specified in subparagraphs (1) or (2) of this paragraph, would be a condition which could reasonably be expected to yield the

~~results described in subparagraph (1) or (2) of this paragraph had diagnosis been made as therein prescribed. Provided, however, that any diagnosis made under this clause shall be in accordance with generally accepted medical procedures for diagnosing pneumoconiosis.~~

~~(b) (1)~~ (a) He be is unable to engage in any substantial gainful activity by reason of pneumoconiosis which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than ~~twelve (12)~~ months; or

~~(2)~~ (b) ~~where the requirements of paragraph (a) of this section are not, the finding that a miner is under a total disability is established by~~ the irrebuttable presumption established in 92-1315.2(3) applies.

~~2.~~ (2) ~~Evaluating total disability.~~ (a) Total disability may not be found for purposes of this ~~part~~ section unless pneumoconiosis is the impairment involved. Whether or not pneumoconiosis in a particular case constitutes a disability as defined in ~~1. (b)~~ subsection (1) of this section is determined from all the facts of that case. Primary consideration is given to the severity of the individual's pneumoconiosis. ~~Medical~~ Except where other evidence rebuts a finding of disability (e.g., the individual is actually engaging in substantial gainful activity), medical considerations alone can~~, except where~~

~~other evidence rebuts a finding of "disability," e.g., the individual is actually engaging in substantial gainful activity,~~ justify a finding that the individual is under a disability where his impairment is one that meets the duration requirement in ~~1. (b),~~ subsection (1)(a) of this section and is listed in the appendix to this ~~subpart~~ subsection. However, the presumption established in 92-1315.2(3) applies.

(b) Pneumoconiosis may be found disabling if it does prevent the individual from engaging in any substantial gainful activity. ~~Such an~~ The individual~~, however, shall~~ may be determined to be under a disability only if his pneumoconiosis is the primary reason for his inability to engage in substantial gainful activity. ~~In any such case, it~~ It must also be established that the individual has a respiratory impairment because of pneumoconiosis~~,~~ which is demonstrated on the basis of an MVV and FEV^1 which are equal to or less than the values specified in the following table or by a medically equivalent test~~.~~:

(Inches)	Height and equal to or less than	MVV equal to or less than
	L./Min.	L.
57 or less	52	1.4
58	53	1.4

59	54	1.4
60	55	1.5
61	56	1.5
62	57	1.5
63	58	1.5
64	59	1.6
65	60	1.6
66	61	1.6
67	62	1.7
68	63	1.7
69	64	1.8
70	65	1.8
71	66	1.8
72	67	1.9
73 or more	68	1.9

~~3.~~ (3) ~~Evidence of pneumoconiosis.~~ (a) A finding of the existence of pneumoconiosis may not be made in the absence of:

~~(1)~~ (i) ~~A~~ a chest roentgenogram showing the existence of pneumoconiosis classified as category 1, 2, 3, A, B, or C, according to the international labor organization (1958), international labor organization (1968), or union internationale contra cancer/Cincinnati (1968) classifications of the pneumoconioses (if the chest roentgenogram is classified as category Z, it should be

reclassified as category 0 or category 1 and only the latter accepted as evidence of pneumoconiosis); ~~or~~

~~(2)~~ (ii) ~~An~~ an autopsy showing the existence of pneumoconiosis; or

~~(3)~~ (iii) ~~A~~ a biopsy (other than a needle biopsy) showing the existence of pneumoconiosis. ~~Such~~ The biopsy ~~would~~ is not ~~be~~ expected to be performed for the sole purpose of diagnosing pneumoconiosis. Where a biopsy is performed for other purposes, however, (e.g., in connection with a lung resection), the report thereof will be considered in determining the existence of pneumoconiosis.

(b) The roentgenogram, to conform to accepted medical standards, should represent a posterior-anterior view of the chest, taken at a distance of ~~six (6)~~ feet between the ~~X-ray~~ x-ray tube and the ~~X-ray~~ x-ray film on a 14 by 17 inch ~~X-ray~~ x-ray film.

(c) A report of autopsy or biopsy shall include a detailed gross (macroscopic) and microscopic description of the lungs or visualized portions of the lungs. If an operative procedure has been performed to obtain a portion of a lung, the evidence should include a copy of the operative note and the pathology report of the gross and microscopic examination of the surgical specimen. If an autopsy has been performed, the evidence should include a complete copy of the autopsy report.

~~4.(4) Determining medical equivalence.~~ (a) An individual's impairment shall be determined to be medically the equivalent of an impairment listed in the appendix to this ~~subpart~~ subsection only if the medical findings with respect thereto are at least equivalent in severity and duration to the listed findings of the listed impairment.

(b) Any decision made under ~~2.(a)~~ subsections (2)(a) and ~~6.(a)~~ (6)(a) of this section as to whether an individual's impairment is medically the equivalent of an impairment listed in the appendix to this ~~subpart,~~ subsection shall be based on medical evidence demonstrated by medically acceptable clinical and laboratory diagnostic techniques, including a medical judgment furnished by one or more physicians designated by the ~~board,~~ division relative to the question of medical equivalence.

(c) Any decision as to whether a medical test is medically equivalent to the test described in ~~2.(b)~~ subsection (2)(b) of this section shall be based on appropriate medical evidence, including a judgment furnished by one or more physicians designated by the ~~board,~~ division relative to the question of the medical equivalence of ~~such~~ the test.

~~5.(5) Evidence of origin of pneumoconiosis. (a) If a miner was employed for ten (10) years or more in coal mines and is suffering or has suffered from pneumoconiosis, it~~

~~will be presumed, in the absence of evidence to the contrary, that the pneumoconiosis arose out of such employment.~~

~~(b) In any other case, a~~ A miner suffering or who has suffered from pneumoconiosis must submit the evidence necessary to establish that the pneumoconiosis arose out of employment in the coal mines. However, the presumption established in 92-1312.2(1) applies.

~~6.(6) Death due to pneumoconiosis. (a) A miner's death will be determined to have been due to pneumoconiosis if the miner suffered from a chronic dust disease of the lung which meets the requirements of 1.(a); or~~

~~(b) If a deceased miner was employed for ten (10) years or more in coal mines and died from a respirable disease, it will be presumed, in the absence of evidence to the contrary, that his death was due to pneumoconiosis.~~ The claimant must submit the evidence necessary to establish that the miner's death was due to pneumoconiosis and that the pneumoconiosis arose out of employment in coal mines. Death will be found due to a respirable disease when death is ascribed to a chronic dust disease, or to another chronic disease of the lung. Death will not be found due to a respirable disease in those cases in which the disease reported does not suggest a reasonable possibility that death was, in fact, due to pneumoconiosis, (e.g., cancer of

the lung, disease due to trauma, or pulmonary emboli~~), or~~ However, the presumptions established in subsections (2) and (3) of 92-1315.2 apply.

~~(c) Under circumstances other than those in paragraphs (a) or (b) of this section, the claimant must submit the evidence necessary to establish that the miner's death was due to pneumoconiosis and that the pneumoconiosis arose out of employment in coal mines.~~"

Section 7. There is a new R.C.M. section numbered 92-1315.2 that reads as follows:

92-1315.2. Presumptions in determining whether death or disability due to pneumoconiosis. In the event of death or disability due to pneumoconiosis, the following presumptions apply:

(1) If a miner who is suffering or who has suffered from pneumoconiosis was employed for 10 years or more in one or more coal mines, there is a rebuttable presumption that his pneumoconiosis arose out of that employment.

(2) If a miner was employed for 10 years or more in one or more coal mines and died from a respiratory disease, there is a rebuttable presumption that the death was due to pneumoconiosis.

(3) There is an irrebuttable presumption that the miner is totally disabled due to pneumoconiosis or that death was due to pneumoconiosis, as the case may be, if he

is suffering or suffered from a chronic dust disease of the lung which:

(a) when diagnosed by chest roentgenogram, yields one or more large opacities (greater than one centimeter in diameter) and would be classified in category A, B, or C in the international classification of radiographs of the pneumoconioses by the international labor organization;

(b) when diagnosed by biopsy or autopsy, yields massive lesions in the lung; or

(c) when diagnosis is made by other means, would be a condition which would reasonably be expected to yield results described in (a) or (b) above if diagnosis had been made in the manner prescribed in (a) or (b).

Section 8. Section 92-1316, R.C.M. 1947, is amended to read as follows:

"92-1316. Where ~~silicosis~~ pulmonary occupational disease causes death. Where ~~silicosis~~ a pulmonary occupational disease causes death and a claim for death benefits is filed, the "pulmonary specialists," or any one of them, if the medical evidence be not controverted, shall examine all available evidence pertaining to the claim and shall make findings and thereupon report to the ~~board~~ division. The report ~~shall constitute~~ is prima facie evidence of fact as to the matters therein contained."

Section 9. Section 92-1317, R.C.M. 1947, is amended to

read as follows:

"92-1317. When occupational disease other than ~~silicosis~~ a pulmonary disease causes death. When an occupational disease, other than ~~silicosis~~ a pulmonary disease, causes death and a claim for death benefits is filed therefor, ~~a member of the "medical committee"~~ the division shall select at least two physicians who in the division's judgment could properly determine the condition regarding the decedent's death in relation to a possible occupational disease, and the physicians shall examine all available evidence pertaining to the claim and shall make findings and ~~thereupon~~ report to the ~~board~~ division. The report ~~shall constitute~~ is prima facie evidence of fact as to the matters therein contained."

Section 10. Section 92-1318, R.C.M. 1947, is amended to read as follows:

"92-1318. Autopsy. Upon the filing of a claim for compensation for death caused by an occupational disease where an autopsy is necessary ~~accordingly and scientifically~~ to ~~ascertain and~~ determine the cause of death, ~~such~~ an autopsy shall be ordered by the ~~board, which~~ division. The autopsy shall be made under the supervision of the county coroner. The ~~board~~ division may designate a duly licensed physician who is a specialist in such examinations to perform or attend ~~such~~ the autopsies, and to certify his

findings thereon. ~~Such~~ The findings shall be examined ~~by a member of the medical panel, and shall be on file with the board where it shall be a public record~~ by the physicians submitting reports under the provisions of 92-1316 and 92-1317 before the final reports under those sections are submitted to the division."

Section 11. Section 92-1319, R.C.M. 1947, is amended to read as follows:

"92-1319. Periodic medical examinations. ~~A.~~ (1) ~~The~~ Upon the request of the division or the insurer, each employee entitled to compensation shall submit ~~himself for~~ to a medical examination ~~by a member of the "medical panel,"~~ from time to time by a physician designated by the division who is a member of the appropriate medical panel. The examination shall be at a place reasonably convenient for the ~~workman when requested by the board, the insurer or the employer~~ employee.

~~B.~~ (2) The ~~request~~ order directing the examination shall fix a time and place having regard to the convenience of the employee, his physical condition, and his ability to attend. The employee and any other party in interest may have a physician present at the examination if ~~such~~ the physician is provided and paid for by the employee or other party.

~~C.~~ (3) If the employee refuses to submit to the

examination or obstructs the examination, his right to compensation ~~shall be~~ is suspended until the examination has been made, and no compensation ~~shall be~~ is payable during or for ~~such~~ the period of suspension.

~~b.~~(4) A physician who makes or is present at the examination may be required to testify as to the result thereof.

~~c.~~(5) The ~~board~~ division may reduce or suspend the compensation of an employee who persists in unsanitary or injurious practices tending to imperil or retard his recovery, or who refuses to submit to such medical or surgical treatment as is reasonably essential to promote his recovery."

Section 12. Section 92-1320, R.C.M. 1947, is amended to read as follows:

"92-1320. Payment of medical examination and autopsy expenses. ~~Expense~~ The expense of the first medical examination as provided in ~~section 92-1315~~ 92-1318.1 shall be borne by the ~~employer if compensation is claimed under plan one, by the insurer if the claim is under plan two, and by the board if the claim is under plan three~~ insurer. The expense of ~~re-examination~~ a reexamination shall be borne by the dissatisfied party requesting ~~such re-examination~~ the reexamination. The expense of the periodic medical examinations, as provided in ~~section~~ 92-1319, shall be borne

by the party requesting ~~such~~ the periodic medical examination. The expense of the autopsy, as provided for in ~~section~~ 92-1318, shall be borne by the party requesting ~~such~~ the autopsy."

Section 13. Section 92-1323, R.C.M. 1947, is amended to read as follows:

"92-1323. Prohibiting lump-sum settlements. (1) No final and binding award made upon any claim pursuant to this ~~act~~ chapter may be converted into a lump-sum payment, in whole or in part, except ~~in case the claimant, after having filed a claim with the employer, the board or the insurer, as the case may be, shall have~~ as provided in this section. If a claimant has entered into a contract of employment with an attorney for the recovery of ~~such claim,~~ benefits under this chapter and the terms of ~~which~~ the employment contract ~~shall be deemed to be~~ are reasonable, ~~compensation by said board for such attorney's services, in which case,~~ the amount of ~~such~~ the attorney's ~~compensation~~ fee may be ordered by the ~~board~~ division to be paid by the ~~employer,~~ insurer ~~or the board as the case may be,~~ and thereafter deducted proportionately from weekly payments thereafter to be made to the claimant ~~pursuant to~~ under this ~~act, or said board~~ chapter. The division may ~~at its option~~ require ~~such~~ payments to be deducted each week in ~~such~~ an amount ~~as~~ it ~~deems~~ considers advisable from the payments thereafter to be

made to the claimant ~~pursuant to~~ under this ~~act~~ chapter and paid to ~~said~~ the attorney as they are so deducted from the weekly payments to the claimant.

(2) Whenever there are contested issues as to an insurer's liability for a claim under this chapter, including a claim based on 92-1311(1)(d), a claimant and an insurer may enter into a full and final compromise settlement of the claim. However, no such settlements are binding on the parties until approved by the division. After the division approves a full and final compromise settlement, the claim is closed and the insurer's liability for a settled claim is forever released."

Section 14. Section 92-1324, R.C.M. 1947, is amended to read as follows:

"92-1324. Burial expenses. In addition to and separate and apart from any other compensation or benefit provided for in this ~~act~~ chapter, there shall be paid in case of death of an employee, which death is the result of an occupational disease contracted in the course of employment, the reasonable burial expenses of the employee, not exceeding ~~five hundred dollars ($500.00)~~ the maximum amount provided for in 92-705."

Section 15. Section 92-1325, R.C.M. 1947, is amended to read as follows:

"92-1325. Medical and hospital expenses. In addition

to the compensation provided by this ~~act~~ chapter, the following shall be furnished:

(1) If an employee becomes totally disabled from an occupational disease, he ~~shall be~~ is entitled to receive, without limitation as to length of time or dollar amount, reasonable medical services, hospitalization, medicines, and such other treatment as may be approved by the ~~board~~ division ~~not exceeding in amount the sum of twenty-five hundred dollars ($2,500.00), provided, however, that in such cases of total disability where apportionment of such sum does not meet such hospital expense, the board may allow an additional amount for such additional hospital and medical expenses as in special cases it may deem proper.~~

(2) ~~Any~~ An employee who suffers ~~any of the~~ from an occupational ~~diseases~~ disease ~~listed in section~~ as defined in 92-1304, but who is able to continue in ~~his~~ employment while being treated therefor, ~~shall be~~ is entitled to receive ~~such~~ the medical services, treatments, and medicines reasonably required, not exceeding the value of ~~one thousand dollars ($1,000.00)~~ $2,500.

~~The employer, or insurer, or the board shall not be required to furnish such services if the employee refuses to allow them to be furnished or if the employee is under hospital contract as provided in section 92-616.~~

~~When such employee is under a hospital contract as~~

~~above and when hospital and medical facilities or both are inadequate to the needs of a disabled employee in a particular case such disabled employee may, any time, be placed where adequate hospital facilities are obtainable, and the cost thereof in whole or in part shall be a legal charge against the one so contracting to furnish hospital facilities, and the amount of such charge and the necessity therefor shall be determined by the board.~~"

Section 16. Section 92-1330, R.C.M. 1947, is amended to read as follows:

"92-1330. Agreement by employee to waive compensation or to pay premium void — no liability in certain cases. (1) An agreement by an employee to waive his rights to ~~compensation and except as otherwise provided in this act, an agreement by an employee~~ coverage under the Occupational Disease Act of Montana or to pay any portion of the premium paid by his employer~~, shall be~~ is void.

~~A.~~(2) ~~The~~ An employer may give, within ~~two~~ 2 weeks of ~~the application~~ the beginning of employment, a physical ~~examinations~~ examination to ~~the applicants~~ an applicant for employment. Where an applicant for employment, whether ~~such applicant~~ he has been formerly employed by the employer to whom application is made, or not, though not actually disabled, is found upon competent medical and ~~X-ray~~ x-ray examination to be afflicted with an occupational disease,

~~such~~ the employer ~~shall~~ is not ~~be~~ liable under this ~~act~~ chapter for disability from the particular disease or diseases with which the employee is found to be afflicted or for any normal progression without aggravation of ~~said~~ the disease or diseases~~,~~ if a report of ~~said~~ the medical examination ~~be~~ is approved by the ~~board~~ division as ~~hereinafter~~ provided in this section.

(3) The report of the medical examination of the applicant for employment and ~~X-rays~~ x-rays, if any, shall be delivered to the ~~board~~ division by the employer within ~~five (5)~~ 15 days after ~~such~~ the examination, ~~to such~~ with the medical report and ~~X-rays~~ x-rays, if any, there shall be attached a certificate by the examining physician certifying that the medical report is the report of the physical examination of the applicant for employment.

(4) The ~~board~~ division shall submit ~~such~~ the medical report and ~~X-rays~~ x-rays, if any, to a physician of its choice ~~from the medical panel,~~ and ~~such~~ the physician shall report to the ~~board~~ division his finding as to whether the medical report is satisfactory. The ~~board~~ division shall within ~~twenty (20)~~ days after the receipt of ~~such~~ the medical report from the employer enter its order approving or disapproving ~~such~~ the report and specifying the particular disease or diseases found. ~~Such~~ The order shall be in writing stating the reasons for ~~such~~ the approval or

disapproval. A copy of ~~such~~ the order shall be mailed to the employer and ~~a copy of such order shall be mailed to~~ the applicant for employment within ~~twenty four (24)~~ hours after the ~~board~~ division has approved or disapproved ~~such~~ the report.

(5) An applicant for employment may commence work prior to the approval or disapproval of ~~such~~ the report by the ~~board, but~~ division. However, if the ~~board shall disapprove such~~ division disapproves the report, the employer may discharge ~~such~~ the applicant for employment without liability to ~~such applicant~~ him.

(6) ~~Provided, however, that if~~ If no physical examination is given to the applicant for employment within ~~said two (2) week~~ the 2-week period, ~~then such~~ the applicant for employment ~~shall be~~ is fully eligible ~~to~~ for the benefits ~~of this act~~ under this chapter.

~~B. Employers may give within one hundred eighty (180) days after becoming subject to this act physical examinations to any employees which said employer has in his employment. Where an employee, though not actually disabled is found upon competent medical and X-ray examination to be afflicted with an occupational disease or diseases, such employer shall not be liable under this act for disability from the particular disease or diseases with which the employee is found to be afflicted or for any normal progression without aggravation of said disease or diseases, if a report of said medical examination be approved by the board as hereinbefore provided in subsection A of this section.~~

~~Provided, however, that if no examination is given to the employee within said one hundred eighty (180) day period then such employee shall be fully eligible to the benefits of this act.~~

~~C. All such reports shall become permanent records of the board.~~

(7) The ~~board~~ division may ~~make~~ adopt reasonable rules ~~and regulations~~ relative to the form, execution, and filing of ~~such~~ reports submitted under this section not inconsistent with the provisions of this ~~act~~ chapter."

Section 17. There is a new R.C.W. section numbered 92-1334.1 that reads as follows:

92-1334.1. Occupational disease coverage under compensation plans. (1) Every employer enrolled under compensation plan No. 1 (Title 92, chapter 9), every insurer writing workers' compensation coverage under compensation plan No. 2 (Title 92, chapter 10), and the state compensation insurance fund under compensation plan No. 3 (Title 92, chapter 11), all provided for under the Workers' Compensation Act, are considered to also provide full coverage for claims under the occupational disease act. Any

policy of insurance for workers' compensation coverage under the Workers' Compensation Act written by a private insurance carrier or the state compensation insurance fund is considered to provide full occupational disease coverage under the provisions of Title 92, chapter 13.

(2) Except as provided in this chapter, the division shall apply the appropriate provisions of Title 92, chapters 9, 10, and 11, to the administration of the Occupational Disease Act of Montana in the same manner as they are applied to the administration of the Workers' Compensation Act.

(3) Under compensation plan No. 3, any premiums and other receipts held by the division for occupational disease insurance coverage shall be transferred and become part of the workers' compensation industrial insurance account, and payments for occupational disease claims by the state fund shall be paid out of the industrial insurance account.

Section 18. Section 92-1335, R.C.M. 1947, is amended to read as follows:

"92-1335. Hearing, findings, and awards. ~~Upon receiving a demand for hearing or rehearing by a party dissatisfied by either the first or second determination of compensability by the board, as provided in section 92-1315, the board shall hold such hearing within ninety (90) days from the date of demand for hearing or rehearing. After the~~

~~final hearing by the board, it shall within thirty (30) days, make and file a finding upon all facts involved in the controversy, and its award, which shall state its determination as to the rights of the parties.~~ Appeals from a final determination of the division shall be made to the workers' compensation judge. The judge, after a hearing held pursuant to 92-852, shall make a final determination concerning the claimant's claim. The judge may overrule the division only on the basis that the division's determination is:

(1) in violation of constitutional or statutory provisions;

(2) in excess of the statutory authority of the agency;

(3) made upon unlawful procedure;

(4) affected by other error of law;

(5) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or

(6) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion."

Section 19. Section 92-1337, R.C.M. 1947, is amended to read as follows:

"92-1337. Where payment due to child under eighteen years. Where payment is due to a child under ~~eighteen (18)~~

years of age or to a person adjudged incompetent, the ~~same~~ payments shall be made to the parent or to the duly appointed conservator or guardian, as the case may be, and the ~~written receipt of such parent or guardian~~ payments ~~shall~~ acquit the ~~employer, the~~ insurer ~~or board, as the case may be,~~ of further liability. In other cases, payment shall be made to the person entitled thereto or to his duly authorized representative."

Section 20. Section 92-1339, R.C.M. 1947, is amended to read as follows:

"92-1339. Common-law defenses not available. ~~1.~~ Employers subject to and who fail to comply with the provisions of ~~section 92-1334~~ 92-1307 ~~shall~~ are not ~~be~~ entitled to the benefits of this ~~act~~ chapter during the period of noncompliance, and ~~shall~~ are not ~~avail himself of~~ entitled to invoke the defenses:

~~1.~~(1) ~~That~~ that the employee was negligent, unless ~~such~~ the negligence was willful;

~~2.~~(2) ~~That~~ that the disability was caused by the negligence of a fellow employee; or

~~3.~~(3) ~~That~~ that the employee had assumed the risks inherent, incident to, or arising out of his employment, or arising from the failure of the employer to provide and maintain a reasonably safe place to work, or reasonably safe tools or appliances."

Section 21. Section 92-1340, R.C.M. 1947, is amended to read as follows:

"92-1340. Penalties for violation. An employer subject to this ~~act~~ chapter who fails to comply with ~~section 92-1334~~ 92-1307, or a person who violates any other provision of this ~~act, does an act prohibited thereby, or fails or refuses to perform a duty imposed by this act within the time prescribed by law or by the board for which no penalty is specifically provided, or fails, neglects or refuses to obey an order of the board or a judgment of a court under the provisions of this act,~~ chapter is guilty of a misdemeanor punishable by a fine of ~~not less than one hundred dollars ($100.00) nor more than six hundred dollars ($600.00) for the first offense, and not less than two hundred dollars ($200.00) nor more than twelve hundred dollars ($1200.00) for each subsequent offense~~ no more than $500."

Section 22. Section 92-1343, R.C.M. 1947, is amended to read as follows:

"92-1343. Legal action by ~~board~~ division. Upon request of the ~~board~~ division, the attorney general shall institute and prosecute actions for the enforcement of the provisions of this ~~act~~ chapter ~~or for the recovery of money due the state occupational disease compensation account in the agency fund~~ or for any penalty provided for in this ~~act, and~~

~~be~~ chapter. The attorney general shall prosecute or defend all actions brought by or against the ~~board, or the members thereof~~ division in ~~their~~ its official capacity. The ~~board~~ division may compromise any action brought under this ~~act~~ chapter."

Section 23. Section 92-1346, R.C.M. 1947, is amended to read as follows:

"92-1346. Claim forms prescribed by ~~board~~ division. Claims for compensation under this ~~act~~ chapter shall be filed on forms prescribed and provided for by the ~~board~~ division and shall be filed in the same manner as claims for compensation under the ~~workmen's~~ Workers' Compensation Act unless ~~in this act~~ otherwise provided in this chapter."

Section 24. Section 92-1352, R.C.M. 1947, is amended to read as follows:

"92-1352. Powers of ~~board~~ division. The ~~board~~ division is hereby vested with full power, authority, and jurisdiction to do and perform any and all things, whether herein specifically designated or in addition thereto, which are necessary or convenient in the exercise of any power, authority, or jurisdiction conferred upon it under this ~~act~~ chapter."

Section 25. Section 92-1358, R.C.M. 1947, is amended to read as follows:

"92-1358. Books, records, and payrolls to be open to

inspection. The books, records, and payrolls of the employer~~,~~ pertinent to the administration of this ~~act,~~ chapter shall always be open to inspection by the ~~board~~ division or any duly authorized employee thereof~~,~~ for the purpose of ascertaining the correctness of the payroll, the number of ~~men~~ persons employed, and such other information as may be necessary for the ~~board~~ division and its management under this ~~act~~ chapter. Refusal on the part of the employer to submit ~~said~~ the books, records, and payrolls for ~~such~~ the inspection ~~shall subject~~ subjects the offending employer to a penalty of ~~one hundred dollars ($100.00)~~ for each offense, to be collected by civil action in the name of the state."

Section 26. Repealer. Sections 92-1303, 92-1306, 92-1309, 92-1312, 92-1313, 92-1328, 92-1334, 92-1336, 92-1344, 92-1349, and 92-1356, R.C.M. 1947, are repealed.

-End-

Forty-fifth LEGISLATIVE SESSION

COMMITTEE ON Labor & Employment Relations

SENATE BILL NO.	ENTERED COMM.	DATE TO BE CONSIDERED 1977	OUT OF COMM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMEND. DATE	BE CONCURRED IN DATE	BE CONC. IN AS AMENDED DATE	BE NOT CONCURRED IN DATE
SB 334	1/29/77	2/9/77	2/16/77	2/16/77					
SB 345	1/29/77	Sent to another committee	———						
SB 357	2/1/77	2/2/77	2/2/77	2/2/77					
SB 358	2/1/77	2/2/77	2/2/77	2/2/77					
SB 371	2/2/77	2/16/77	2/16/77		2/16/77				
SB 201	2/7/77	2/18/77	2/18/77		2/18/77				
SB 409	2/7/77	2/18/77	tabled						
SB 430	2/12/77	2/16/77	2/16/77	2/16/77					
SJR 40	2/24/77	2/25/77	2/25/77	2/25/77					

(Bills, etc. Resolutions)

MINUTES OF THE MEETING
LABOR & EMPLOYMENT RELATIONS COMMITTEE
MONTANA STATE SENATE

February 16, 1977

The sixteenth meeting of the Labor and Employment Relations Committee was called to order by Chairman Lee on the above date in Room 402 of the State Capitol Building at 9:30 a.m.

ROLL CALL: All members present with Senator Nelson excused.

CONSIDERATION OF SB 371: An act to require operators of certain air compressors to be licensed by the Division of Workers' Compensation.

Senator Smith, Chief Sponsor of this bill, introduced SB 371 to the committee. This was a law until two years ago when there had to be licensed air compressor operators. They deleted this two years ago. I feel this should be seriously considered.

Russell Myers, representing International Union of Operating Engineers Local 927, appeared in support of this bill. The I.U.O.E. provided two amendments that they would like to be incorporated into the bill. The first amendment is to amend page 1, section 1, line 21. Following: "and". Strike: "100 pounds per square inch pressure (p.s.i.)". This amendment is of extreme importance. This bill if passed in its present form, could and would eliminate industry and contractors - the very ones who should be covered. The other amendment is to amend page 2, section 3, line 5. Following: "on". Strike: "December 31 of each year". Insert: "its anniversary date". (See attached testimony)

Bill Potts, representing United Paper Workers, appeared in support of SB 371. He also felt the proposed amendments should be incorporated into this bill. Montana had licensing of air compressor operators for many years, but the law was rather vague. A bill was submitted two years ago to clarify the law, but failed to pass the senate so there has been no compressor licensing the past two years. There has never been a completely fail-safe device made yet for compressors. They should be licensed. (See attached testimony)

Bill Potts also submitted testimony to the committee from Charles H. Frey, who was unable to attend the meeting. He also is in support of HB 371. (See attached testimony)

Merle D. Casey, representing I.U.O.E. #927, appeared in support of SB 371. I am presently working with an oxygen system. If we allow these lines to cease, it could cause a serious accident. Oxygen systems need special attention while running. An explosion of his type could cause serious problems.

There being no further proponents to SB 371, Senator Lee called for any opponents.

are designed and built to run unattended. A licensed operator would add nothing to their safe operation. (See attached testimony).

Bob Heilding, representing Montana Woods Products Association, appeared in opposition to SB 371. I recommend the bill be killed in committee.

Senator Smith in closing stated he would like to submit the two amendments that the International Union of Operating Engineers submitted. You heard from both sides that people who have been around air compressors already have safety devices. But there are still problems. These operatiors should be licensed and this will result in the safety operation of the compressors.

General discussion was then held by the committee. Senator Smith moved that the committee adopt the amendments to amend page 1, section 1, line 21. Following: "and" Strike: "100 pounds per square inch pressure (p.s.i.). And the second amendment to amend page 2, section 3, line 5. Following: "on" Strike: "December 31 of each year" Insert: "anniversary date." The motion carried with Senator Goodover voting "nay".

Senator Smith then made a motion that SB 371 DO PASS. The motion failed with Senators Lee, Mehrens, and Smith voting "aye", Senators Lowe, Goodover, Himsl and Nelson voting "nay" and Senator Blaylock abstaining. SB 371 was killed in committee.

CONSIDERATION OF HB 241: An act to provide for the correct period for appealing the Board of Labor Appeals decision.

Representative E.N. Dassinger, Chief Sponsor of the bill, introduced HB 241 to the committee. The only thing HB 241 does is change the days of appeal to the courts and the court reviews from 10 to 30 days after the date of notification or mailing of the decision. The reason for the change is to permit the allowable days to correspond to the Administration Procedures Act.

George Hammond, representing Montana Council 9, AFSCME, AFL-CIO, appeared in support of HB 241. We believe that the change from 10 to 30 days for court review is necessary for the aggrieved party to prepared most cases reviewed by the court.

There being no questions on HB 241, Senator Blaylock moved HB 241 BE CONCURRED IN. The motion carried unanimously.

CONSIDERATION OF SB 430: An act for the general clarification and revision of the Occupational Disease Act of Montana.

This bill is the last bill out of the packet of Workers' Compensation bills. This bill was agreed on then by the committee

and there were no problems with it. Norman Grosfield, Division of Workers' Compensation stated that he, John Bobinski and Steve Williams of Anaconda Company reviewed the final copy of the bill. There were a few minor changes in the bill mostly dealing with grammatical changes.

Norman Grosfield added that George Wood, Montana Self Insurers, gave him permission to state that he supports SB 430.

Ernie Post, representing Montana State AFL-CIO stated they fully support SB 430.

Senator Goodover moved SB 430 DO PASS. The motion carried unanimously.

CONSIDERATION OF SB 234: An act to permit the Employment Security Division to appeal decisions of the board of Labor Appeals; and to provide time for the appeals.

Moody Brickett, representing Employment Security Division, introduced this bill to the committee by request of the Department of Labor. The Employment Security Division, Department of Labor and Industry, feels that under the present state they have no right to appeal a decision of the Board of Labor Appeals to justify its decision before the State District Courts. The Employment Security Division feels the Board of Labor Appeals should occupy a statement of whether or not the individual agencies of other states were bound by decisions of its final administrative Appeals Board. (See attached testimony)

George Hammond, representing Montana Council #9, AFSCME, AFL-CIO, appeared in support of SB 234. It is more practical to allow a aggrieved party up to 30 days to prepare their review in court and can support the position of the Division whereby their attorney will represent the Division rather than the Board of Labor Appeals.

General discussion was held by the committee. What this permits is that the Division can challenge the dicision of the Boark of Labor Appeals. John Bobinski stated there was an error in the working and this bill should be amended as follows. Amend page 2, section 1, line 16. Strike: "10". Insert: "30". Senator Smith moved SB 234 DO PASS AS AMENDED. The motion carried unanimously.

CONSIDERATION OF SB 334: Senator Blaylock moved that SB 334 DO PASS. The motion carried unanimously with Senator Goodover abstaining.

CONSIDERATION OF SB 80: Senator Smith gave a report on the amendments that the subcommittee adopted and moved that the committee adopt amendments 1 through 21. The motion carried unanimously. No decision was made on SB 80 at this time.

ROLL CALL

LABOR & EMPLOYMENT RELATIONS COMMITTEE

45th LEGISLATIVE SESSION - - 1977 Date 2/16

NAME	PRESENT	ABSENT	EXCUSED
Senator Robert Lee, Chairman	✓		
Senator Bill Lowe, Vice Chairman	✓		
Senator Chet Blaylock	✓		
Senator Pat Goodover	✓		
Senator Matt Himsl	✓		
Senator Sandy Mehrens	✓		
Senator Harold Nelson			✓
Senator Richard Smith	✓		

27

SENATE _____ COMMITTEE

BILL _____ VISITORS' REGISTER DATE _____

NAME	REPRESENTING	BILL #	(check one) SUPPORT	OPPOS
Mark Johnke	Student			
George Turk	Eyedean Co. MSA	371		✓
Johnson Eftenbeyer	Horner Waldorf Corp.	371		✓
Stephen Williams	Anaconda Co.	430	✓	
Bill Potts	B&S Limited Safety worker [illegible]	371	✓	
Dorham E. Swanberg	Montana R.R. Assn.	371		X
Robert D. Ward	Burlington Northern	371		X
E. M. Dassinger	carrying bill	241	✓	
Norman H. Anderson	Division of Workers' Comp	430	✓	
Jim Murphy	✓ ✓	430	✓	

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY

28

DATE 2/16

COMMITTEE ON LABOR BILL NO.

VISITOR'S REGISTER

NAME	REPRESENTING	Check One: Support	Oppo
Rod Wilson	Billings Chamber of Commerce		
BOB HEDOWY	Montana Wood Products Assn.	234	37
John Murphy	Division of Workers Comp	430	
Norman Grosfield	Divn of Workers' Comp	430	
[illegible] Bergeron	Division of Workers' Comp	430	
Ernest Cook	Mont. State AFL-CIO	321	
Joe McCarthy	Anaconda Co		37
Tony Bar[illegible]	Mont Coal Assoc-		37
Robert Cajacobi	Operating Engineers Local 400	371	
Stephen Williams	Anaconda Co.	430	

LABOR & EMPLOYMENT RELATIONS COMMITTEE

45th Legislature

Bill No.	Subject Matter	Date In	Sponsor	Hearing Date	Committee Action	Date Out
SB 234	TO ELIMINATE THE BD. OF LABOR APPEALS AS A PARTY DEFENDANT; TO PERMIT EMP. SEC. DIV. TO APPEAL DECISIONS OF BD. OF LABOR APPEALS..	2/24/77	Sen. Lee	3/9/77	BE CONCURRED IN	3/14/77
SB 430	FOR THE GENERAL CLARIFICATION & REVISION OF THE OCCUPATIONAL DISEASE ACT OF MONTANA.	3/2/77	Sen. Labor Committee	3/11/77	BE CONCURRED IN	3/11/77
SB 436	AUTHORIZING COUNTIES TO CREATE WORK & EMPL. PROGRAMS FOR PERSONS RECEIVING PUB. ASSISTANCE, UNEMPLOYED PERSONS, & OTHER VOLUNTEERS TO BE CALLED THE COUNTY RESOURCE CORPS.	3/2/77	Sen. Towe	3/11/77	BE NOT CONCURRED IN	3/11/77
SJR 38	REQUESTING DEPT. OF LABOR, EMPL. SEC. DIV., TO PROVIDE THE LEGIS. AUDITOR W/QTRLY. REPORTS..	3/2/77	Sen. Rasmussen, Sen. State Admin. Committee	3/14/77	BE CONCURRED IN	3/14/77
SJR 40	REQUESTING THE COMM. ON PRIORITIES TO ASSIGN A STUDY ON THE CHILD LABOR LAWS OF MONTANA.	3/7/77	Sen. Mehrens, Healy, et al	3/14/77	BE CONCURRED IN	3/14/77

March 11, 1977

LABOR AND EMPLOYMENT RELATIONS COMMITTEE PROCEEDINGS:

A meeting of the House Labor and Employment Relations Committee was held on Friday, March 11, 1977 at 10:00 a.m. in Room 225 of the State Capitol. All members were present.

The first bill to be heard was SENATE BILL 430, another committee bill from the Senate Labor Committee. Senator Goodover presented the bill to this committee. This bill was requested by the Division of Workers Compensation. The amendments made in the Senate had been agreed to by the Anaconda Company, as well as the AFL-CIO. Norman Grosfield, Administrator of the Workers Compensation Division, Dept. of Labor, then spoke. The current act was passed in 1959. At that time they tried to address all conceivable problems dealing with this area. This bill revises the entire act. There are substantive changes in the bill. Medical benefits were changed to comply with the current Workers Compensation Act. Expert panels of doctors are needed to review occupational disease claims and to examine the patients. The bill suggests a similar procedure, but it is clarifying the problems. The bill also suggests a panel for non-pulmonary occupational diseases. A memorandum was then distributed describing the bill section by section. Steve Williams, an attorney with the Anaconda Company, stood up in support of the bill. His company has reviewed this bill on two occasions before the session started in January. The procedures outlined in this bill will benefit not only the Workers Comp. Division, but all other parties involved. Ernie Post, AFL-CIO, rose on behalf of Mr. Jim Murry in support of the bill.

There were no opponents to SB 430. Questions were asked. The hearing was closed.

SENATE BILL 436 was then heard. The sponsor, Senator Towe, opened by explaining that he had introduced this bill because of concerns voiced to him in eastern Montana. People had been asking him, "How come we don't require those receiving welfare to work and do something constructive?" This bill extols the work ethic - it allows counties to create resource corps composed of volunteers and persons who are on public assistance. Creative job opportunities are emphasized in the bill, particularly projects which would help low income people or help beautify the county in which they live. Participation, with the exception of welfare recipients, would be completely voluntary. The Senate wants to require persons on unemployment to participate as well. However, Senator Towe at this time called the committee's attention to several proposed amendments which would delete this portion of the bill. The bill as amended would still mandate that employment offices encourage unemployment recipients to participate in the programs. The counties would be encouraged

The chairman entertained a motion to send SB 436 to the Rules Committee before taking action on it. Rep. Teague so moved; Rep. Williams seconded the motion. Discussion. Rep. Lynch asked whether there was enough feeling for the bill to warrant sending it to the Rules Committee. He would rather see HB 803 pass. He then moved that SB 436 BE NOT CONCURRED IN. Rep. Dassinger seconded the motion. Further discussion. Rep. Dassinger stated that he felt the portion of the bill providing that this be an "incentive program" would cost money to accomplish, in all areas. Rep. Teague rose in opposition to the motion. Question was then called for. Motion carried with Reps. Teague, Ellerd and Kanduch opposed.

SENATE BILL 430 was then acted upon. Rep. Williams moved that it BE CONCURRED IN. Rep. Turner seconded the motion. Motion carried unanimously. Rep. Williams agreed to carry the bill on the floor.

SENATE BILL 385 was acted upon. Rep. Lynch presented the Subcommittee Report. He explained several amendments which they had come up with. He then moved that the bill BE CONCURRED IN AS AMENDED. Rep. Williams seconded the motion; motion carried with Reps. Ellerd and Turner opposed. Rep. Lynch will carry this bill.

SENATE BILL 357 was then acted upon. Rep. Teague moved that it BE CONCURRED IN AS AMENDED according to the amendment Mr. Grosfield from the Dept. of Labor had suggested at the hearing on this bill. Rep. Baeth seconded the motion. Discussion. Motion carried with Rep. Sivertsen leaving a "no" vote. Rep. Lynch agreed to carry this bill, also.

SENATE BILL 234 received a motion that it BE CONCURRED IN. Motion carried unanimously; the Chairman agreed to carry this bill.

The meeting was then adjourned.

Chairman - Rep. Gary N. Kimble

Secretary

SENATE BILL NO. 430

INTRODUCED BY LABOR AND EMPLOYMENT RELATIONS COMMITTEE

LEE, CHAIRMAN

BY REQUEST OF THE DIVISION OF WORKERS' COMPENSATION

A BILL FOR AN ACT ENTITLED: "AN ACT FOR THE GENERAL CLARIFICATION AND REVISION OF THE OCCUPATIONAL DISEASE ACT OF MONTANA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. There is a new R.C.M. section numbered 92-1303.1 that reads as follows:

92-1303.1. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Beneficiary" is as defined in 92-413.

(2) "Child" is as defined in 92-417.

(3) "Disablement" means the event of becoming physically incapacitated by reason of an occupational disease from performing any work for remuneration or profit. "Silicosis", when complicated by active pulmonary tuberculosis, is presumed to be total disablement. "Disability", "total disability", and "totally disabled" are synonymous with "disablement", but they have no reference to "partial permanent disability".

(4) "Division" is as defined in 92-426.

(5) "Employer" is as defined in 92-410.1.

(6) "Employee" is as defined in 92-411.

(7) "Husband" is as defined in 92-425.

(8) "Independent contractor" is as defined in 92-438.1.

(9) "Insurer" is as defined in 92-435. The term includes an employer who is self-insured under compensation plan No. 1.

(10) "Invalid" is as defined in 92-416.

(11) "Pneumoconiosis" means a chronic dust disease of the lungs arising out of employment in coal mines and includes anthracosis, coal workers' pneumoconiosis, silicosis, or anthracosilicosis arising out of such employment.

(12) "Order" is as defined in 92-429.

(13) "Silicosis" means a chronic disease of the lungs caused by the prolonged inhalation of silicon dioxide (SiO2), characterized by small discrete nodules of fibrous tissue similarly disseminated throughout both lungs causing the characteristic x-ray pattern and by other variable clinical manifestations.

(14) "Wages" is as defined in 92-403.1.

(15) "Wife" is as defined in 92-424.

(16) "Year" is as defined in 92-433.

33

Section 2. Section 92-1311, R.C.M. 1947, is amended to read as follows:

"92-1311. Payment of compensation -- exceptions and limitations. ~~A.(1) Compensation~~ When he has complied with other provisions of this chapter, compensation shall be paid to ~~every employee~~ a claimant who becomes disabled by reason of occupational disease arising out of his employment, subject to the ~~following~~ conditions~~, and when claims are presented and notices given in accordance with the limitations of sections 92-1312 and 92-1313~~ set forth in this chapter.

~~1.~~(a) No Except as provided for in this section, compensation ~~shall~~ may not be paid when the last day of the injurious exposure of the employee to the hazard of the occupational disease has occurred prior to ~~the effective date of this act except as in this section, paragraph "A" subparagraph 4 provided~~ July 1, 1959.

~~2.~~(b) No compensation ~~shall~~ may be paid for a disease, other than silicosis or due to ionizing radiation, unless total disability results within ~~one hundred twenty (120)~~ days from the last day upon which the employee actually worked for the employer against whom compensation is claimed, ~~provided that the board~~ However, the division, upon good cause shown, may waive this limitation in the interest of justice, but in any case ~~said~~ the period may not

be extended to more than ~~one~~ 1 year from the date of last employment by the ~~said~~ employer.

~~3.~~(c) No Except as provided for in subsection (1)(d) of this section, no compensation ~~shall~~ may be paid ~~in case~~ of for silicosis unless during the ~~eight~~ 8 years immediately preceding the disablement the injured employee has been exposed to harmful quantities of silicon dioxide dust for a total period of not less than ~~one thousand (1,000)~~ workshifts in employment in this state and unless total disability results within ~~four~~ 4 years from the last day upon which the employee actually worked for the employer against whom compensation is claimed.

~~4.~~(d) ~~Provided, however, that any~~ A silicotic employee who is discharged by his employer to escape liability for silicosis benefits under this ~~act~~ chapter ~~shall be~~ is eligible to receive compensation under this ~~act~~ chapter when totally disabled if he has ~~seven hundred (700)~~ actual workshifts since January 1, 1954, for that employer, ~~provided, further, when~~ When any employee in employment on or after January 1, 1959, because he has an occupational disease incurred in and caused by such employment, which is not yet disabling, is discharged or transferred from the employment in which he is engaged, or when ~~an employee~~ he ceases ~~such~~ his employment and it is in fact, as determined by the medical panel, inadvisable for him on account of such

a nondisabling occupational disease, to continue in ~~its~~ employment and he suffers wage loss by reason of ~~such~~ the discharge, transfer, or ~~such~~ cessation, the ~~board~~ division may allow compensation on account thereof as it ~~may deem~~ considers just, not exceeding ~~five thousand dollars ($5,000.00)~~ $10,000.

~~(b) No claim shall be maintained nor compensation paid unless the claim has been filed with the employer, the insurer of (or) the board, in writing under oath within the time fixed by section 92-1312.~~

~~(b)~~(2) ~~The compensation~~ Compensation shall be paid to the ~~beneficiary and dependents~~ beneficiaries of every employee covered by this ~~act~~ chapter in cases where death results from an occupational disease arising out of his employment, subject to the following conditions:

~~(a)~~ No Except as provided for in subsection (1)(d) of this section, compensation ~~shall~~ may not be paid when the last day of injurious exposure of the employee to the hazards of the occupational diseases ~~has~~ occurred prior to ~~the effective date of this act, except as in this section, paragraph "A", subparagraph 4 of this act provided~~ July 1, 1959.

~~(c)~~(b) No compensation ~~shall~~ may be paid for death from silicosis unless during the ~~eight~~ 8 years immediately preceding the disablement the deceased employee has been

exposed to harmful quantities of silicon dioxide dust for a period of not less than ~~one thousand (1,000)~~ workshifts in employment in this state.

~~(d)~~(c) No compensation ~~shall~~ may be paid for death from silicosis unless the death results within ~~four (4)~~ years from the last day upon which the employee actually worked for the employer against whom compensation is claimed, except in those cases where death results during a period of continuous total disability from silicosis for which compensation has been paid or awarded, or for which a claim, compensable but for such death, is on file with the ~~commission~~ division. In such cases compensation shall be paid if death results within ~~seven (7)~~ years from the last day upon which the employee actually worked for the employer against whom compensation is claimed.

~~(e)~~(d) No compensation ~~shall~~ may be paid for death from any occupational disease, other than silicosis or due to ionizing radiation, unless death results within ~~one (1)~~ year from the last day upon which the employee actually worked for the employer against whom compensation is claimed, except in those cases where death results during a period of continuous total disability from an occupational disease, other than silicosis or ionizing radiation, for which compensation has been paid or awarded, or for which a claim, compensable but for such death, is on file with the board

division. In such cases compensation shall be paid if death results within ~~three (3)~~ years from the last day upon which the employee actually worked for the employer against whom compensation is claimed.

~~5. No claim shall be maintained nor compensation paid unless the claim has been filed with the employer, the insurer or the board, as the case may be, in writing within the time fixed by section 92-1312.~~

~~6.~~ (3) Proof of the exposure to silicon dioxide dust for a period of not less than ~~one thousand two hundred (1,200)~~ workshifts in employment in this state, with proof of total disability from silicosis, ~~shall be~~ is prima facie evidence of exposure to harmful quantities of such dust during all such period."

Section 3. There is a new R.C.M. section numbered 92-1312.1 that reads as follows:

92-1312.1 Time when claims must be presented. (1) When a claimant seeks benefits under this chapter, his claims for benefits must be presented in writing to the employer, the employer's insurer, or the division within 1 year from the date the claimant knew or should have known that his total disability condition resulted from an occupational disease. When a beneficiary seeks benefits under this chapter, his claims for death benefits must be presented in writing to the employer, the employer's insurer, or the division within

1 year from the date the beneficiaries knew or should have known that the decedent's death was related to an occupational disease.

(2) The division may, upon a reasonable showing by the claimant or a decedent's beneficiaries that the claimant or the beneficiaries could not have known that the claimant's condition or the employee's death was related to an occupational disease, waive the claim time requirement up to an additional 2 years.

(3) Notwithstanding the provisions of subsections (1) and (2) of this section, no claim to recover benefits under this chapter may be maintained unless the claim is properly filed within 3 years after the last day upon which the claimant or the deceased employee actually worked for the employer against whom compensation is claimed.

Section 4. Section 92-1314, R.C.M. 1947, is amended to read as follows:

"92-1314. ~~Medical~~ Pulmonary specialist medical panel, ~~medical committee~~ and pulmonary specialists. (1) The Montana medical association may, at least annually, certify to the board division ~~as "medical committee nominees" thirty (30) or more licensed physicians of the state of Montana who are particularly qualified in the diagnosis, care and treatment of occupational diseases. In addition thereto, and simultaneously therewith the Montana medical association may~~

~~certify--to--the--board~~ as ~~"~~pulmonary specialists nominees~~"~~ three ~~(3)~~ or more licensed physicians of the state who shall have had at the time of certification at least ~~five--(5)~~ years' practice in the diagnosis, care, and treatment of diseases of the pulmonary tract and the interpretation of ~~x-ray~~ x-ray films thereof and may also certify to the division as occupational disease specialist nominees three or more licensed physicians of the state who have at the time of certification qualifications in the diagnosis, care, and treatment of nonpulmonary occupational diseases. From the two lists submitted as provided for in this section, the division shall appoint two separate medical panels. One panel is the pulmonary specialist medical panel and the other is the occupational disease medical panel. The division shall appoint from the list of pulmonary specialist nominees three or more physicians to serve on the pulmonary specialist medical panel. The division shall appoint from the list of occupational disease specialist nominees three or more physicians to serve on the occupational disease specialist medical panel. ~~from--said--list--of--physicians certified--as--"medical-committee-nominees,"-the-board-shall appoint-thirty-(30)-physicians-who-shall--serve--as--and--be hereinafter--referred--to-as-the-"medical-committee"-and-who shall---examine---claimants---for----occupational----disease disabilities---other--than--silicosis,--from--said--list--of~~

~~physicians-so-certified-as-"pulmonary--specialist--nominees" the--board--shall--appoint--three-(3)-or-more-physicians-who shall-serve-as-and-be-hereinafter-referred-to-as--"pulmonary specialists,"~~

~~(2) In---the---event---that~~ If the Montana medical association fails to ~~make-the-certification--as--hereinabove provided,--then,--in--that-event,-the-board-shall-of-its-own choice-appoint-thirty-(30)-licensed-physicians-in-the--state of--Montana-who-are-particularly-qualified-in-the-diagnosis, care-and--treatment--of--occupational--diseases--which--said physicians--shall-serve-as-and-be-hereinafter-referred-to-as the-"medical-committee"-and~~ submit the two lists of nominees as provided for in this section, the division shall appoint members to the medical panels by appointing to the pulmonary specialist medical panel three ~~(3)~~ or more licensed physicians in the state of Montana who have had at the time of appointment at least ~~five--(5)~~ years' practice in the diagnosis, care, and treatment of diseases of the pulmonary tract and the interpretation of ~~x-ray~~ x-ray films thereof, ~~which-latter-group-of-three-(3)-or-more-shall-serve--as--and be--hereinafter--referred-to-as-"pulmonary-specialists,"-the "medical---committee,"---together---with---the-----"pulmonary specialists,"--shall-be-known-as-and-hereinafter-referred-to as--the--"medical--panels"~~ and by appointing to the occupational disease medical panel three or more licensed

37

physicians of the state who have at the time of appointment qualifications to diagnose, care for, and treat nonpulmonary occupational diseases."

Section 5. There is a new R.C.M. section numbered 92-1314.1 that reads as follows:

92-1314.1. Procedure for medical examination. (1) In order to determine the compensability of claims under this chapter based on pulmonary conditions, the following procedure shall be followed:

(a) The division shall direct the claimant to a pulmonary specialist who is a member of the pulmonary specialist medical panel for an examination. The pulmonary specialist shall conduct an examination to determine whether the claimant is totally disabled and is suffering from a pulmonary occupational disease. The pulmonary specialist shall submit a report of his findings to the division.

(b) Either the claimant or the insurer may, within 20 days after the receipt of the report by the first pulmonary specialist, request that the claimant be examined by a second pulmonary specialist who shall be a member of the pulmonary specialist medical panel. If a second examination is requested, the division shall direct the claimant to a second pulmonary specialist and the pulmonary specialist shall conduct an examination to determine whether he believes the claimant is totally disabled and is suffering

from a pulmonary disease. The pulmonary specialist shall submit a report of his findings to the division. When a second examination has been requested, the reports of the examinations shall be submitted to the pulmonary specialist medical panel for its review. The panel shall issue its report concerning the claimant's physical condition and whether the claimant is suffering from an occupational disease.

(c) If a second examination is not requested, the division shall issue its order determining whether the claimant is entitled to occupational disease benefits based on the report of the first examining physician. If a second examination is requested, the division shall issue its order based on the report of the pulmonary specialist medical panel.

(2) In order to determine the compensability of claims under this chapter based on nonpulmonary conditions, the following procedure shall be followed:

(a) The division shall direct the claimant to an occupational disease specialist who is a member of the occupational disease medical panel for an examination. The specialist shall conduct an examination to determine whether the claimant is totally disabled and is suffering from an occupational disease. The specialist shall submit a report of his findings to the division.

(b) Either the claimant or the insurer may, within 20 days after the receipt of the report by the first specialist, request that the claimant be examined by a second specialist. If a second examination is requested, the division shall direct the claimant to a second specialist who is a member of the occupational disease medical panel and the specialist shall conduct an examination to determine whether he believes the claimant is totally disabled and is suffering from an occupational disease. The specialist shall submit a report of his findings to the division. When a second examination has been requested, the reports of the examinations shall be submitted to the occupational disease medical panel for its review. The panel shall issue its report concerning the claimant's physical condition and whether the claimant is suffering from an occupational disease.

(c) If a second examination is not requested, the division shall issue its order determining whether the claimant is entitled to occupational disease benefits based on the report of the first examining specialist. If a second examination is requested, the division shall issue its order based on the report of the occupational disease medical panel.

(3) A report submitted to the division by the appropriate medical panel and placed in the division's

records is prima facie evidence as to the matters contained in the report.

(4) Upon the division's own motion or if a claimant or an insurer requests that a hearing be held by the division prior to the time the division issues its final determination concerning the claimant's entitlement to occupational disease benefits, the division shall hold a hearing.

(5) At a hearing held before the division or the workers' compensation judge, the report of the medical panel and the two medical examinations conducted by members of the medical panel are exclusive and final and no other medical evidence or additional medical examinations are admissible. However, the physicians to which the claimant has been referred as provided for in this section may, in order to assist them in reaching their conclusion, consult with the claimant's attending physician.

(6) Within 20 days after the division has issued its order of determination as to whether the claimant is entitled to benefits under this chapter, a party may request a rehearing. In order to perfect an appeal to the workers' compensation judge, the appealing party must request a rehearing before the division. The division may grant a rehearing and, if a rehearing is granted, the division's final determination shall not be issued until after the

37

rehearing. If the division does not grant a rehearing, the division's final determination is issued on the date the rehearing is denied.

Section 6. Section 92-1315, R.C.M. 1947, is amended to read as follows:

"92-1315. ~~Procedure for medical examination.~~ Standards for determining whether death or disability due to pneumoconiosis. ~~As in order to determine the validity of claims made pursuant to the provisions of this act, the following procedure and no other shall be followed in the course of the medical examination of the claimant for official report to said board, claimant, employer, or insurer, as the case may be.~~

~~(1) Upon the filing of a claim by a claimant for occupational disease disability, other than silicosis or pneumoconiosis, the board shall direct a member from said "medical committee" to examine and determine the disability of the claimant and submit a written report thereon to the board.~~

~~Upon the filing of a claim for compensation for silicosis disability under this act, the board shall direct an examination of and report to the board upon the claimant by said "pulmonary specialists," or one of them, including such x-ray and other pathological examination and tests as in the opinion of such specialist or specialists may be~~

~~necessary for the purpose of determining diagnosis, disablement, and the nature and type of medical treatment, hospitalization and other care required. If the claim is not controverted as to any medical facts, the examination and report of one of said specialists, shall be deemed the examination and report of all "pulmonary specialists." If the claim is controverted as to any medical facts, the report shall be made by all of said specialists after a physical examination by at least two (2) of them. The findings and opinions of a majority of the number of said specialists then appointed shall constitute the findings and opinions of all of them. The contents of the report of said "pulmonary specialists" when placed in the record shall constitute prima facie evidence of fact as to the matter therein contained. The "pulmonary specialists" or any one (1) of them making the report shall be subject to examination upon demand of any interested parties.~~

~~The "pulmonary specialists," or any one (1) of them in order to assist in reaching a conclusion may require the attending physician or director of a hospital or a sanitarium or other place in which treatment or care is being given, or has been given, to attend at a convenient time and place to consult with said specialists, or any one or them and to describe the nature and type of care and treatment and furnish any other evidence which said~~

specialist or specialists desire.

Upon receiving the written report of such examining physician or physicians so appointed, the board shall forthwith determine whether or not the claimant shall receive the benefits pursuant to this act and it shall forward notice of its determination together with a true and correct copy of said medical report to the claimant and the employer or insurer as the case may be.

2. If within twenty (20) days after receipt of such notice and medical report the claimant, employer or insurer as the case may be, is dissatisfied with said determination by said board, they, or any of them, may demand a hearing before said board pursuant to the rehearing provisions of section 92-829. If, however, the board, claimant, employer or insurer, or any of them, is dissatisfied with the results of such first medical examination as indicated by said medical report, such dissatisfied party may upon thirty (30) days' notice in writing to all adversary parties and to the board require a re-examination by a member of said "medical panel"; provided, however, that if the benefits claimed are for a disability caused by silicosis, the physician so selected by the dissatisfied party must be one of the "pulmonary specialists." Thereupon, after receipt of the report of medical re-examination, the board shall give like notice of its determination, whether said determination

shall be the same as before or otherwise, together with a copy of said medical report, in the same manner as in the case of the first such examination and the party shall be entitled to a rehearing in the same manner as in the case of such first medical examination. The evidence of the two (2) medical examinations above described shall be final, and, so far as the medical examination of the claimant is concerned, no evidence of other or additional medical examinations shall be admissible before the board upon rehearing nor before any court upon the appeal, if any.

B. The standards for determining death or total disability due to pneumoconiosis are as follows:

1. (1) Total disability defined. A miner is under a total disability due to pneumoconiosis if: (a) He is suffering or suffered from a chronic dust disease of the lung which: (i) when diagnosed by chest roentgenogram yields one or more large opacities (greater than one centimeter in diameter) and would be classified in category A, B, or C in the international classification of radiographs of the pneumoconioses by the international labor organization; or (2) when diagnosed by biopsy or autopsy yields massive lesions in the lung that is, shows the existence of progressive massive fibrosis; or (3) when established by diagnosis by means other than those specified in subparagraphs (1) or (2) of this paragraph would be a

~~condition which could reasonably be expected to yield the results described in subparagraph (1) or (2) of this paragraph had diagnosis been made as therein prescribed. Provided, however, that any diagnosis made under this clause shall be in accordance with generally accepted medical procedures for diagnosing pneumoconiosis.~~

~~(b) (1)~~(a) He he is unable to engage in any substantial gainful activity by reason of pneumoconiosis which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than ~~twelve (12)~~ months; or

~~(2) (b) where the requirements of paragraph (a) of this section are met, the finding that a miner is under a total disability is established by~~ the irrebuttable presumption established in 92-1315.2(3) applies.

~~c. (2) Evaluating total disability.~~ (a) Total disability may not be found for purposes of this part section unless pneumoconiosis is the impairment involved. Whether or not pneumoconiosis in a particular case constitutes a disability as defined in ~~1. (b)~~ subsection (1) of this section is determined from all the facts of that case. Primary consideration is given to the severity of the individual's pneumoconiosis. ~~Medical~~ Except where other evidence rebuts a finding of disability (e.g., the individual is actually engaging in substantial gainful

activity), medical considerations alone can, except where ~~other evidence rebuts a finding of "disability", e.g., the individual is actually engaging in substantial gainful activity,~~ justify a finding that the individual is under a disability where his impairment is one that meets the duration requirement in ~~1. (b),~~ subsection (1)(a) of this section and is listed in the appendix to this ~~subpart~~ section and is listed in the appendix to this subsection. However, the presumption established in 92-1315.2(3) applies.

(b) Pneumoconiosis may be found disabling if it does prevent the individual from engaging in any substantial gainful activity. ~~Such an~~ The individual, ~~however, shall~~ may be determined to be under a disability only if his pneumoconiosis is the primary reason for his inability to engage in substantial gainful activity. ~~In any such case, it~~ It must also be established that the individual has a respiratory impairment because of pneumoconiosis, which is demonstrated on the basis of an MVV and FEV1 which are equal to or less than the values specified in the following table or by a medically equivalent test:

Height (Inches)	MVV(MBC) equal to or less than L./Min.	and FEV1 equal to or less than L.

57 or less	52	1.4
58	53	1.4
59	54	1.4
60	55	1.5
61	56	1.5
62	57	1.5
63	58	1.5
64	59	1.6
65	60	1.6
66	61	1.6
67	62	1.7
68	63	1.7
69	64	1.8
70	65	1.8
71	66	1.8
72	67	1.9
73 or more	68	1.9

~~3.~~ (3) ~~Evidence of pneumoconiosis.~~ (a) A finding of the existence of pneumoconiosis may not be made in the absence of:

~~(1)~~ (i) ~~A~~ a chest roentgenogram showing the existence of pneumoconiosis classified as category 1, 2, 3, A, B, or C, according to the international labor organization (1958), international labor organization (1968), or union internationale contra cancer/Cincinnati (1968)

classifications of the pneumoconioses (if the chest roentgenogram is classified as category Z, it should be reclassified as category 0 or category 1 and only the latter accepted as evidence of pneumoconiosis); ~~or~~

~~(2)~~ (ii) ~~An~~ an autopsy showing the existence of pneumoconiosis; or

~~(3)~~ (iii) ~~A~~ a biopsy (other than a needle biopsy) showing the existence of pneumoconiosis. ~~Such~~ The biopsy ~~would~~ is not be expected to be performed for the sole purpose of diagnosing pneumoconiosis. Where a biopsy is performed for other purposes, however, (e.g., in connection with a lung resection), the report thereof will be considered in determining the existence of pneumoconiosis.

(b) The roentgenogram, to conform to accepted medical standards, should represent a posterior-anterior view of the chest, taken at a distance of ~~six (6)~~ feet between the ~~X-ray~~ x-ray tube and the ~~X-ray~~ x-ray film on a 14 by 17 inch ~~X-ray~~ x-ray film.

(c) A report of autopsy or biopsy shall include a detailed gross (macroscopic) and microscopic description of the lungs or visualized portions of the lungs. If an operative procedure has been performed to obtain a portion of a lung, the evidence should include a copy of the operative note and the pathology report of the gross and microscopic examination of the surgical specimen. If an

43

autopsy has been performed, the evidence should include a complete copy of the autopsy report.

~~(4) Determining---medical----equivalence.~~ (a) An individual's impairment shall be determined to be medically the equivalent of an impairment listed in the appendix to this ~~support~~ subsection only if the medical findings with respect thereto are at least equivalent in severity and duration to the listed findings of the listed impairment.

(b) Any decision made under ~~(2)(a)~~ subsections (2)(a) and ~~(6)(a)~~ (6)(a) of this section as to whether an individual's impairment is medically the equivalent of an impairment listed in the appendix to this ~~subpart~~ subsection shall be based on medical evidence demonstrated by medically acceptable clinical and laboratory diagnostic techniques, including a medical judgment furnished by one or more physicians designated by the ~~board~~ division relative to the question of medical equivalence.

(c) Any decision as to whether a medical test is medically equivalent to the test described in ~~(b)~~ subsection (2)(b) of this section shall be based on appropriate medical evidence, including a judgment furnished by one or more physicians designated by the ~~board~~ division relative to the question of the medical equivalence of ~~such~~ the test.

~~(5) Evidence-of-origin-of-pneumoconiosis.-(a)--If--a~~

~~miner--was-employed-for-ten-(10)-years-or-more-in-coal-mines and-is-suffering-or-has--suffered--from--pneumoconiosis,--it will--be--presumed,--in--the--absence--of--evidence--to--the contrary,--that--the--pneumoconiosis--arose--out---of---such employment.~~

~~(b)--In--any-other-case,-a~~ A miner suffering or who has suffered from pneumoconiosis must submit the evidence necessary to establish that the pneumoconiosis arose out of employment in the coal mines. However, the presumption established in 92-1312.2(1) applies.

~~(6) Death-due-to-pneumoconiosis.-(a)-A-miner's-death will-be-determined-to-have-been-due-to-pneumoconiosis-if-the miner-suffered-from-a-chronic-dust-disease-of-the-lung-which meets-the-requirements-of-it--(a)-or~~

~~(b)--If--a--deceased--miner--was--employed-for-ten-(10) years-or-more-in-coal--mines--and--died--from--a--respirable disease,--it-will-be-presumed,-in-the-absence-of-evidence-to the-contrary,-that-his-death-was-due-to-pneumoconiosis.~~ The claimant must submit the evidence necessary to establish that the miner's death was due to pneumoconiosis and that the pneumoconiosis arose out of employment in coal mines. Death will be found due to a respirable disease when death is ascribed to a chronic dust disease, or to another chronic disease of the lung. Death will not be found due to a respirable disease in those cases in which the disease

reported does not suggest a reasonable possibility that death was, in fact, due to pneumoconiosis; ~~(e.g., cancer of the lung, disease due to trauma,~~ or pulmonary embolism~~, or~~. ~~However, the presumptions established in subsections (2) and (3) of 92-1315.2 apply.~~

~~(c) Under circumstances other than those in paragraphs (a) or (b) of this section, the claimant must submit the evidence necessary to establish that the miner's death was due to pneumoconiosis and that the pneumoconiosis arose out of employment in coal mines.~~"

Section 7. There is a new R.C.M. section numbered 92-1315.2 that reads as follows:

92-1315.2. Presumptions in determining whether death or disability due to pneumoconiosis. In the event of death or disability due to pneumoconiosis, the following presumptions apply:

(1) If a miner who is suffering or who has suffered from pneumoconiosis was employed for 10 years or more in one or more coal mines, there is a rebuttable presumption that his pneumoconiosis arose out of that employment.

(2) If a miner was employed for 10 years or more in one or more coal mines and died from a respiratory disease, there is a rebuttable presumption that the death was due to pneumoconiosis.

(3) There is an irrebuttable presumption that the

miner is totally disabled due to pneumoconiosis or that death was due to pneumoconiosis, as the case may be, if he is suffering or suffered from a chronic dust disease of the lung which:

(a) when diagnosed by chest roentgenogram, yields one or more large opacities (greater than one centimeter in diameter) and would be classified in category A, B, or C in the international classification of radiographs of the pneumoconioses by the international labor organization;

(b) when diagnosed by biopsy or autopsy, yields massive lesions in the lung; or

(c) when diagnosis is made by other means, would be a condition which would reasonably be expected to yield results described in (a) or (b) above if diagnosis had been made in the manner prescribed in (a) or (b).

Section 8. Section 92-1316, R.C.M. 1947, is amended to read as follows:

"92-1316. Where ~~silicosis~~ pulmonary occupational disease causes death. Where ~~silicosis~~ a pulmonary occupational disease causes death and a claim for death benefits is filed, the "pulmonary specialists," or any one of them, if the medical evidence be not controverted, shall examine all available evidence pertaining to the claim and shall make findings and thereupon report to the ~~board~~ division. The report ~~shall constitute~~ is prima facie

evidence of fact as to the matters therein contained."

Section 9. Section 92-1317, R.C.M. 1947, is amended to read as follows:

"92-1317. When occupational disease other than ~~silicosis~~ a pulmonary disease causes death. When an occupational disease, other than ~~silicosis~~ a pulmonary disease, causes death and a claim for death benefits is filed therefor, ~~a member of the "medical committee"~~ the division shall select at least two physicians who in the division's judgment could properly determine the condition regarding the decedent's death in relation to a possible occupational disease, and the physicians shall examine all available evidence pertaining to the claim and shall make findings and ~~thereupon~~ report to the ~~board~~ division. The report ~~shall constitute~~ is prima facie evidence of fact as to the matters therein contained."

Section 10. Section 92-1318, R.C.M. 1947, is amended to read as follows:

"92-1318. Autopsy. Upon the filing of a claim for compensation for death caused by an occupational disease where an autopsy is necessary ~~accordingly and scientifically~~ to ~~ascertain and~~ determine the cause of death, ~~such~~ an autopsy shall be ordered by the ~~board which~~ division. The autopsy shall be made under the supervision of the county coroner. The ~~board~~ division may designate a duly licensed

physician who is a specialist in such examinations to perform or attend ~~such~~ the autopsies, and to certify his findings thereon. ~~Such~~ The findings shall be examined by ~~a member of the medical panel, and shall be on file with the board where it shall be a public record~~ by the physicians submitting reports under the provisions of 92-1316 and 92-1317 before the final reports under those sections are submitted to the division."

Section 11. Section 92-1319, R.C.M. 1947, is amended to read as follows:

"92-1319. Periodic medical examinations. ~~A (1)~~ The Upon the request of the division or the insurer, each employee entitled to compensation shall submit ~~himself for~~ to a medical examination ~~by a member of the "medical panel,"~~ from time to time by a physician designated by the division who is a member of the appropriate medical panel. The examination shall be at a place reasonably convenient for the ~~workman when requested by the board, the insurer or the employer~~ employee.

~~(2)~~ The request order directing the examination shall fix a time and place having regard to the convenience of the employee, his physical condition, and his ability to attend. The employee and any other party in interest may have a physician present at the examination if such the physician is provided and paid for by the employee or other

party.

~~(3)~~ (3) If the employee refuses to submit to the examination or obstructs the examination, his right to compensation ~~shall be~~ is suspended until the examination has been made, and no compensation ~~shall be~~ is payable during or for ~~such~~ the period of suspension.

~~(4)~~ (4) A physician who makes or is present at the examination may be required to testify as to the result thereof.

~~(5)~~ (5) The ~~board~~ division may reduce or suspend the compensation of an employee who persists in unsanitary or injurious practices tending to imperil or retard his recovery, or who refuses to submit to such medical or surgical treatment as is reasonably essential to promote his recovery."

Section 12. Section 92-1320, R.C.M. 1947, is amended to read as follows:

"92-1320. Payment of medical examination and autopsy expenses. ~~Expense~~ The expense of the first medical examination as provided in ~~section 92-1315~~ 92-1314.1 shall be borne by the ~~employer if compensation is claimed under plan one by the insurer if the claim is under plan two and by the board if the claim is under plan three~~ insurer. The expense of ~~re-examination~~ a reexamination shall be borne by the dissatisfied party requesting ~~such re-examination~~ the

reexamination. The expense of the periodic medical examinations, as provided in ~~section~~ 92-1319, shall be borne by the party requesting ~~such~~ the periodic medical examination. The expense of the autopsy, as provided for in ~~section~~ 92-1318, shall be borne by the party requesting ~~such~~ the autopsy."

Section 13. Section 92-1323, R.C.M. 1947, is amended to read as follows:

"92-1323. Prohibiting lump-sum settlements. (1) No final and binding award made upon any claim pursuant to this ~~act~~ chapter may be converted into a lump-sum payment, in whole or in part, except ~~in case the claimant, after having filed a claim with the employer, the board or the insurer as the case may be, shall have~~ as provided in this section. If a claimant has entered into a contract of employment with an attorney for the recovery of ~~such claim,~~ benefits under this chapter and the terms of ~~which~~ the employment contract ~~shall be deemed to be~~ are reasonable, ~~compensation by said board for such attorney's services, in which case,~~ the amount of ~~such~~ the attorney's ~~compensation~~ fee may be ordered by the ~~board~~ division to be paid by the ~~employer,~~ insurer ~~or the board as the case may be,~~ and thereafter deducted proportionately from weekly payments thereafter to be made to the claimant ~~pursuant to~~ under this ~~act or said board~~ chapter. The division may ~~at its option~~ require ~~such~~

47

payments to be deducted each week in ~~such~~ an amount ~~as it deems~~ considers advisable from the payments thereafter to be made to the claimant ~~pursuant to~~ under this ~~act~~ chapter and paid to ~~said~~ the attorney as they are so deducted from the weekly payments to the claimant.

(2) Whenever there are contested issues as to an insurer's liability for a claim under this chapter, including a claim based on 92-1311(1)(d), a claimant and an insurer may enter into a full and final compromise settlement of the claim. However, no such settlements are binding on the parties until approved by the division. After the division approves a full and final compromise settlement, the claim is closed and the insurer's liability for a settled claim is forever released."

Section 14. Section 92-1324, R.C.M. 1947, is amended to read as follows:

"92-1324. Burial expenses. In addition to and separate and apart from any other compensation or benefit provided for in this ~~act~~ chapter, there shall be paid in case of death of an employee, which death is the result of an occupational disease contracted in the course of employment, the reasonable burial expenses of the employee, not exceeding ~~five hundred dollars ($500.00)~~ the maximum amount provided for in 92-705."

Section 15. Section 92-1325, R.C.M. 1947, is amended

to read as follows:

"92-1325. Medical and hospital expenses. In addition to the compensation provided by this ~~act~~ chapter, the following shall be furnished:

(1) If an employee becomes totally disabled from an occupational disease, he ~~shall be~~ is entitled to receive, without limitation as to length of time or dollar amount, reasonable medical services, hospitalization, medicines, and such other treatment as may be approved by the ~~board~~ division ~~not exceeding in amount the sum of twenty-five hundred dollars ($2,500.00), provided, however, that in such cases of total disability where apportionment of such sum does not meet such hospital expense, the board may allow an additional amount for such additional hospital and medical expenses as in special cases it may deem proper.~~

(2) ~~Any~~ An employee who suffers ~~any of the~~ from an occupational ~~diseases~~ disease ~~listed in section~~ as defined in 92-1304, but who is able to continue in his employment while being treated therefor, ~~shall be~~ is entitled to receive ~~such~~ the medical services, treatments, and medicines reasonably required, not exceeding the value of ~~one thousand dollars ($1,000.00)~~ $2,500.

~~the employer or insurer, or the board shall not be required to furnish such services if the employee refuses to allow them to be furnished or if the employee is under~~

~~hospital contract as provided in section 92-610.~~

~~When such employee is under a hospital contract as above and when hospital and medical facilities or both are inadequate to the needs of a disabled employee in a particular case such disabled employee may any time be placed where adequate hospital facilities are obtainable and the cost thereof in whole or in part shall be a legal charge against the one so contracting to furnish hospital facilities and the amount of such charge and the necessity therefor shall be determined by the board.~~"

Section 16. Section 92-1330, R.C.M. 1947, is amended to read as follows:

"92-1330. Agreement by employee to waive compensation or to pay premium void -- no liability in certain cases. ~~(1)~~ An agreement by an employee to waive his rights to ~~compensation and except as otherwise provided in this act~~ an agreement by an employee coverage under the Occupational Disease Act of Montana or to pay any portion of the premium paid by his employer ~~shall be~~ is void.

~~(2)~~ (2) ~~The~~ An employer may give, within ~~two~~ 2 weeks of ~~the application~~ the beginning of employment, a physical ~~examinations~~ examination to ~~the applicants~~ an applicant for employment. Where an applicant for employment, whether ~~such applicant~~ he has been formerly employed by the employer to whom application is made, or not, though not actually

disabled, is found upon competent medical and ~~x-ray~~ x-ray examination to be afflicted with an occupational disease, ~~such~~ the employer ~~shall~~ is not be liable under this ~~act~~ chapter for disability from the particular disease or diseases with which the employee is found to be afflicted or for any normal progression without aggravation of ~~said~~ the disease or diseases, if a report of ~~said~~ the medical examination be is approved by the ~~board~~ division as ~~hereinafter~~ provided in this section.

(3) The report of the medical examination of the applicant for employment and ~~x-rays~~ x-rays, if any, shall be delivered to the ~~board~~ division by the employer within ~~five (5)~~ 15 days after ~~such~~ the examination. ~~To such~~ With the medical report and ~~x-rays~~ x-rays, if any, there shall be attached a certificate by the examining physician certifying that the medical report is the report of the physical examination of the applicant for employment.

(4) The ~~board~~ division shall submit ~~such~~ the medical report and ~~x-rays~~ x-rays, if any, to a physician of its choice ~~from the medical panel~~, and ~~such~~ the physician shall report to the ~~board~~ division his finding as to whether the medical report is satisfactory. The ~~board~~ division shall within ~~twenty (20)~~ days after the receipt of ~~such~~ the medical report from the employer enter its order approving or disapproving ~~such~~ the report and specifying the

particular disease or diseases found. ~~Such~~ the order shall be in writing stating the reasons for ~~such~~ the approval or disapproval. A copy of ~~such~~ the order shall be mailed to the employer and ~~a copy of such order shall be mailed to~~ the applicant for employment within ~~twenty-four (24)~~ hours after the ~~board~~ division has approved or disapproved ~~such~~ the report.

~~(5)~~ An applicant for employment may commence work prior to the approval or disapproval of ~~such~~ the report by the ~~board, but~~ division. However, if the ~~board shall disapprove such~~ division disapproves the report, the employer may discharge ~~such~~ the applicant for employment without liability to ~~such applicant~~ him.

~~(6) Provided, however, that if~~ If no physical examination is given to the applicant for employment within ~~said two (2) week~~ the 2-week period, ~~then such~~ the applicant for employment ~~shall be~~ is fully eligible to for the benefits ~~of this act~~ under this chapter.

~~3. Employers may give within one hundred eighty (180) days after becoming subject to this act physical examinations to any employees which said employer has in his employment. Where an employee, though not actually disabled is found upon competent medical and X-ray examination to be afflicted with an occupational disease or diseases, such employer shall not be liable under this act for disability from the particular disease or diseases with which the employee is found to be afflicted or for any normal progression without aggravation of said disease or diseases, if a report of said medical examination be approved by the board as hereinbefore provided in subsection 4 of this section.~~

~~Provided, however, that if no examination is given to the employee within said one hundred eighty (180) day period then such employee shall be fully eligible to the benefits of this act.~~

~~5. All such reports shall become permanent records of the board.~~

~~(7)~~ The ~~board~~ division may ~~make~~ adopt reasonable rules ~~and regulations~~ relative to the form, execution, and filing of ~~such~~ reports submitted under this section not inconsistent with the provisions of this ~~act~~ chapter."

Section 17. There is a new R.C.M. section numbered 92-1334.1 that reads as follows:

92-1334.1. Occupational disease coverage under compensation plans. (1) Every employer enrolled under compensation plan No. 1 (Title 92, chapter 9), every insurer writing workers' compensation coverage under compensation plan No. 2 (Title 92, chapter 10), and the state compensation insurance fund under compensation plan No. 3 (Title 92, chapter 11), all provided for under the Workers'

Compensation Act, are considered to also provide full coverage for claims under the occupational disease act. Any policy of insurance for workers' compensation coverage under the Workers' Compensation Act written by a private insurance carrier or the state compensation insurance fund is considered to provide full occupational disease coverage under the provisions of Title 92, chapter 13.

(2) Except as provided in this chapter, the division shall apply the appropriate provisions of Title 92, chapters 9, 10, and 11, to the administration of the Occupational Disease Act of Montana in the same manner as they are applied to the administration of the Workers' Compensation Act.

(3) Under compensation plan No. 3, any premiums and other receipts held by the division for occupational disease insurance coverage shall be transferred and become part of the workers' compensation industrial insurance account, and payments for occupational disease claims by the state fund shall be paid out of the industrial insurance account.

Section 18. Section 92-1335, R.C.M. 1947, is amended to read as follows:

"92-1335. Hearing, findings, and awards. ~~Upon receiving a demand for hearing or rehearing by a party dissatisfied by either the first or second determination of compensability by the board, as provided in section 92-1315, the board shall hold such hearing within ninety (90) days from the date of demand for hearing or rehearing. After the final hearing by the board, it shall within thirty (30) days make and file a finding upon all facts involved in the controversy, and its award, which shall state its determination as to the rights of the parties.~~ Appeals from a final determination of the division shall be made to the workers' compensation judge. The judge, after a hearing held pursuant to 92-852, shall make a final determination concerning the claimant's claim. The judge may overrule the division only on the basis that the division's determination is:

(1) in violation of constitutional or statutory provisions;

(2) in excess of the statutory authority of the agency;

(3) made upon unlawful procedure;

(4) affected by other error of law;

(5) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or

(6) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion."

Section 19. Section 92-1337, R.C.M. 1947, is amended to read as follows:

"92-1337. Where payment due to child under eighteen years. Where payment is due to a child under ~~eighteen--(18)~~ years of age or to a person adjudged incompetent, the ~~same~~ payments shall be made to the parent or to the duly appointed conservator or guardian, as the case may be, and the ~~written-receipt-of--such--parent--or--guardian~~ payments ~~shall~~ acquit the ~~employer,-the~~ insurer ~~or-board,-as-the-case may--be,~~ of further liability. In other cases, payment shall be made to the person entitled thereto or to his duly authorized representative."

Section 20. Section 92-1339, R.C.M. 1947, is amended to read as follows:

"92-1339. Common-law defenses not available. ~~No~~ Employers subject to and who fail to comply with the provisions of ~~section--92-1334~~ 92-1307 ~~shall~~ are not be entitled to the benefits of this ~~act~~ chapter during the period of noncompliance, and ~~shall~~ are not ~~avail-himself--of~~ entitled to invoke the defenses:

~~(1)~~ ~~That~~ that the employee was negligent, unless ~~such~~ the negligence was willful;

~~(2)~~ ~~That~~ that the disability was caused by the negligence of a fellow employee; or

~~(3)~~ ~~That~~ that the employee had assumed the risks inherent, incident to, or arising out of his employment, or arising from the failure of the employer to provide and

maintain a reasonably safe place to work, or reasonably safe tools or appliances."

Section 21. Section 92-1340, R.C.M. 1947, is amended to read as follows:

"92-1340. Penalties for violation. An employer subject to this ~~act~~ chapter who fails to comply with ~~section-92-1334~~ 92-1307, or a person who violates any other provision of this ~~act,-does--an--act--prohibited--thereby,--or--fails--or refuses--to--perform--a--duty-imposed-by-this-act-within-the time-prescribed-by-law-or-by-the-board-for-which-no--penalty is--specifically--provided,-or-fails,-neglects-or-refuses-to obey-an-order-of-the-board-or-a-judgment-of--a--court--under the---provisions--of--this--act,~~ chapter is guilty of a misdemeanor punishable by a fine of ~~not--less--than--one hundred--dollars--($100.00)-nor-more-than-six-hundred-dollars ($600.00)-for-the-first--offense,--and--not--less--than--two hundred--dollars--($200.00)--nor--more--than--twelve-hundred dollars-($1200.00)-for-each-subsequent-offense~~ no more than $500."

Section 22. Section 92-1343, R.C.M. 1947, is amended to read as follows:

"92-1343. Legal action by ~~board~~ division. Upon request of the ~~board~~ division, the attorney general shall institute and prosecute actions for the enforcement of the provisions of this ~~act~~ chapter ~~or-for-the-recovery--of--money--due--the~~

~~state--occupational--disease--compensation--account--in--the agency~~ fund or for any penalty provided for in this ~~act~~ chapter. The attorney general shall prosecute or defend all actions brought by or against the ~~board, or the members thereof~~ division in ~~their~~ its official capacity. The ~~board~~ division may compromise any action brought under this ~~act~~ chapter."

Section 23. Section 92-1346, R.C.M. 1947, is amended to read as follows:

"92-1346. Claim forms prescribed by ~~board~~ division. Claims for compensation under this ~~act~~ chapter shall be filed on forms prescribed and provided for by the ~~board~~ division and shall be filed in the same manner as claims for compensation under the ~~workmen's~~ workers' Compensation Act unless ~~in this act~~ otherwise provided in this chapter."

Section 24. Section 92-1352, R.C.M. 1947, is amended to read as follows:

"92-1352. Powers of ~~board~~ division. The ~~board~~ division is hereby vested with full power, authority, and jurisdiction to do and perform any and all things, whether herein specifically designated or in addition thereto, which are necessary or convenient in the exercise of any power, authority, or jurisdiction conferred upon it under this ~~act~~ chapter."

Section 25. Section 92-1358, R.C.M. 1947, is amended

to read as follows:

"92-1358. Books, records, and payrolls to be open to inspection. The books, records, and payrolls of the employer, pertinent to the administration of this ~~act~~ chapter shall always be open to inspection by the ~~board~~ division or any duly authorized employee thereof, for the purpose of ascertaining the correctness of the payroll, the number of ~~men~~ persons employed, and such other information as may be necessary for the ~~board~~ division and its management under this ~~act~~ chapter. Refusal on the part of the employer to submit ~~said~~ the books, records, and payrolls for ~~such~~ the inspection ~~shall subject~~ subjects the offending employer to a penalty of ~~one hundred dollars ($100.00)~~ for each offense, to be collected by civil action in the name of the state."

Section 26. Repealer. Sections 92-1303, 92-1306, 92-1309, 92-1312, 92-1313, 92-1328, 92-1334, 92-1336, 92-1344, 92-1349, and 92-1356, R.C.M. 1947, are repealed.

-End-